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•REPORT•

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**A PROPOSED MODEL OF
COLLECTIVE BARGAINING AND
REQUIRED AMENDMENTS FOR
THE POLICE ACT**

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
APRIL 1987

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario, a non-partisan voluntary organization, is united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total intergovernmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some six hundred (600) municipal governments throughout Ontario. The governing body is composed of some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

The following sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

Association Sections:

- * County and Regional Section
- * Large Urban Section
- * Northern Ontario Section (FONOM/NOMA)
- * Rural (ROMA) Section
- * Organization of Small Urban Municipalities Section

Association Affiliates:

- * Association of Municipal Clerks and Treasurers of Ontario
- * Association of Municipal Tax Collectors of Ontario
- * Municipal Engineers Association
- * Ontario Municipal Administrators Association
- * Ontario Municipal Personnel Association
- * Ontario Municipal Social Services Association
- * Society of Directors of Municipal Recreation of Ontario
- * Urban Finance Officers Association of Ontario

To the Municipal Clerk:

Please circulate this Report to the members of council and to the staff of your municipality. Additional copies are available at \$10.00 each from the Publications Centre, Association of Municipalities of Ontario, 100 University Avenue, Suite 805, Toronto, Ontario M5J 1V6

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The Association forwarded this report to the Honourable Ken Keyes, Solicitor General, and the Honourable Bernard Grandmaitre, Minister of Municipal Affairs, on June 11, 1987.

A PROPOSED MODEL OF COLLECTIVE BARGAINING AND REQUIRED AMENDMENTS FOR THE POLICE ACT

INTRODUCTION

The Association of Municipalities of Ontario continues to maintain its commitment to making recommendations to the government that will improve municipal services, particularly as they may relate to police and fire services.

An important aspect to providing effective services is the promotion of harmonious labour relations between employer and employees. To this end, while the current model of collective bargaining under the Police Act does include the traditional stages found in the bargaining legislation of other jurisdictions, the model is weak in its attempt to encourage the parties towards a mutually acceptable settlement.

AMO views the role of effective collective bargaining legislation as being that which provides both parties with a constructive and neutral framework with which differences can be resolved by the parties to their mutual satisfaction. As well, AMO believes that more viable alternatives to the present model exist which better keep with the spirit of developing effective labour relations. To this end, the Association is pleased to present the government a model of collective bargaining that it believes best serves this purpose.

Another important aspect of effective municipal services is the degree to which the legislation affords the employer flexibility in administration. Given the high degree of dependence for police and fire services by the public and the implications for public health and safety, it remains that the delivery of these services must be the best possible and legislation should not unnecessarily constrain the employer in its administrative functions. In this regard, AMO has also made recommendations in this report for legislative amendments that would ensure a more effective administration of police services.

SUMMARY

PART I: PROPOSED MODEL OF COLLECTIVE BARGAINING FOR THE POLICE ACT

"association" means either,

- (i) an association whose membership is limited to one police force and comprises not less than 50 percent of the employees of the police force who are not senior officers or, where there is no such association, a majority of the employees not including senior officers, or,
- (ii) an association whose membership is limited to one police force and comprises not less than 50 percent of the senior officers of a police force, or, where there is no such association, a majority of the senior officers.

"employer" means the council of the municipality that maintains a police department or, where there is a board of commissioners of police, the board of commissioners of police.

"party" means the employer or its designated representative, on the one hand, and a bargaining committee of members of the police force excluding senior officers duly established under this Act or a bargaining committee of senior officers duly established under this Act, as the case may be on the other hand, and **"parties"** means the two of them.

"Minister" means the Solicitor General.

Notice of Bargain:

- 29 (1) Where no collective agreement exists or at any time after ninety days before the expiry of a collective agreement or within such further period as the parties may agree upon, a party may give the other written notice of its desire to bargain with a view to making or to the renewal, with or without modifications to the agreement then in operation or to the making of a new agreement.

Conciliation

- (1) Where bargaining has taken place in accordance with subsection 29(1) and 29(2) and,
 - (i) either party has submitted a written notice to the Minister that an impasse has been reached during negotiations, or,
 - (ii) the Minister is of the opinion that an impasse has been reached during negotiations,the Minister shall appoint a conciliation officer.
- (2)
 - (i) where a conciliation officer is appointed, he or she shall confer with the parties and endeavour to effect an agreement and shall, within fourteen days from the date of his or her appointment, report the result of the endeavour to the Minister.
 - (ii) the period mentioned in subsection (i) may be extended by the agreement of the parties or by the Minister upon the advice of the conciliation officer that a collective agreement may be made within a reasonable time if the period is extended.
- (3) Where the conciliation officer reports to the Minister that the difference between the parties concerning the terms of an agreement have been settled or that an agreement cannot be reached, the Minister shall forthwith by notice in writing inform each party of the report.

Mediation

- (1) Where the Minister has given written notice to each party that an agreement cannot be reached, the Minister may appoint a mediator if,
 - (a) either party has requested that the Minister appoint a mediator, or,
 - (b) the Minister is of the opinion that the parties may benefit from the appointment of a mediator.

Arbitration

- (1) Where thirty days has elapsed from the day each party was informed by the Minister of the conciliator's report and the parties have not made or renewed an agreement, as the case may be, and,
 - (i) the Minister has not been requested to appoint a mediator, or,
 - (ii) the Minister has informed the parties that he does not intend to appoint a mediator, or,
 - (iii) a mediator has been appointed and the mediator is of the opinion that the parties proceed to final and binding arbitration,

a board of arbitration of three members shall be constituted for the purpose of making an award that is binding upon the parties and the Minister shall inform the parties that a board of arbitration is to be constituted.
- (2) Each party shall appoint one member and the two members so appointed shall appoint a third member who shall be the chairman.
- (3) Where within thirty days from the day the Minister informed the parties that a board of arbitration is to be constituted, either party fails to appoint an able and willing member to the board of arbitration, the Minister may, upon the written request of the other party, appoint a member.
- (4)
 - (a) Where five days has elapsed from the day the second member was appointed and the two members of the board of arbitration appointed by or on behalf of the parties have failed to agree upon a third member who is able and willing to act, the Minister may, upon written notice of such failure given to him by either of the two members or either party, appoint the third member.
 - (b) Notwithstanding subsection (a), the Minister shall appoint a person to serve as the third member of a board of arbitration from amongst those persons who

have not been considered by the other two members of the board of arbitration.

- (5) Each party shall identify to the other and submit to a board of arbitration not more than three issues in dispute between the parties, or such other number of issues to which the parties may have mutually agreed, and a board of arbitration shall, in making an award, not render a decision on any issue not submitted to it by either party.
- (6) Where, on the first day of proceedings, more than three issues in dispute between parties, or more than the number of issues to which the parties agreed pursuant to subsection (5), as the case may be, have been submitted by a party to a board of arbitration shall require that party to submit to it only three issues or only the number of issues to which parties agreed pursuant to subsection (5), as the case may be, for consideration by the board of arbitration prior to the completion of the first day of proceedings.
- (7) Where an issue in dispute between the parties is not submitted by a party to a board of arbitration for the board's consideration and the parties cannot reach an agreement on the terms of resolution of such issue, the existing provision of the agreement to which the issue refers shall prevail during the term of the agreement and where no provision exists in the collective agreement to which the issue refers, such matter shall not be included in an agreement and no board of arbitration constituted under this Part shall render an award on such matter.
- (8)
 - (1) In the conduct of proceedings before it and in rendering a decision in respect of a matter in dispute, the board of arbitration shall consider any factor that to it appears to be relevant to the matter in dispute including,
 - (a) the desirability to maintain appropriate relationships in the terms and conditions of employment as between different classes of employees,
 - (b) general economic conditions in the community, the province and the nation and the policies of the Government of Ontario,

- (c) the interest and welfare of the public,
 - (d) the terms and conditions of employment in other municipalities,
 - (e) the needs of the council of the municipality for qualified employees,
 - (f) the terms and conditions of employment in other occupations in the public and private sectors as the board of arbitration may consider relevant, and,
 - (g) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of services rendered.
- (9) The Minister shall maintain a current list of qualified persons who may serve as a third member of a board of arbitration and from which the two members appointed to a board of arbitration by or on the behalf of the parties may select.
- (10) (a) The Minister shall maintain a schedule of fees specifying the fee that those persons duly appointed to a board of arbitration as a third member may charge.
- (b) Each party shall assume its own costs of the arbitration proceedings and shall share the cost of the third member equally.

SUMMARY

PART II: REQUIRED LEGISLATIVE AMENDMENTS FOR THE EFFECTIVE ADMINISTRATION OF POLICE SERVICES

- (1) Every collective agreement shall be deemed to provide that it is the exclusive function of the employer to manage, which function, without limiting the generality of the foregoing, includes the right to determine,
 - (a) employment, appointment, complement, organization, assignment, work methods and procedures, kinds and location of equipment and classification of positions, and,
 - (b) promotion, demotion, transfer, lay-off, reappointment, merit system, training and development, and appraisal, and,
 - (c) subject to this Act and the Regulations thereto, demotion, dismissal, discipline and suspension,and such matters shall not be the subject of collective bargaining nor come within the jurisdiction of an arbitrator or board of arbitration.
- (2) **"senior officer"** means a member of a police force of the rank of inspector or higher, but shall not include a civilian employee who is employed in a confidential capacity relating to personnel or labour relations.
- (3) With respect to police commissions:
 - (a) all members of a police commission shall be appointed by municipal council,
 - (b) members of the municipal council may form a majority on the police commission at the discretion of council with a provision for the appointment of non-elected persons,

- (c) the police commission should include the head of council, and,
 - (d) council should approve the annual budget of the commission subject.
- (4) AMO recommends that Sections 16 to 20 of Regulation 791 be amended to provide that the board of commissioners or the committee of council, as the case may be, be able to alter the punishment as it deems just whether or not an appeal has been made.
- (5) Amend section 27(b) and (e) of Regulation 791 to read:
27. No chief of police, constable or other police officer is subject to any penalty under this Part except after a hearing and final disposition of a charge on appeal as provided under this Part, or after the time for appeal has expired, but nothing herein affects the authority of a board or council,
- (b) to dispense with the services of **any police officer** within, eighteen months of having become **a police officer of that force,**
 - (e) to discharge or place on retirement, if he or she is entitled thereto, any member of the force who, on the evidence of two legally qualified medical practitioners **selected by the Board or council,** is, due to mental or physical disability, incapable of performing his or her duties in a manner fitted to satisfy the requirement of his or her position but any decision of the Board or council made pursuant to this clause may be appealed to the Commission.
- (6) Amend Section 32 of Regulation 791 to read:
32. No chief of police, constable or other police officer shall be appointed to a police force unless he or she:
- (a) **is a Canadian citizen;**
 - (b) **is twenty-one years of age or over;**
 - (c) certified by a legally qualified medical practitioner to be in good health, mentally and physically, and fit

- for duty as a member of a police force;
- (d) produces satisfactory proof of having completed at least a grade 12 secondary school education or its equivalent; and
- (e) is of good moral character.

PART I: A PROPOSED MODEL OF COLLECTIVE BARGAINING FOR THE POLICE ACT

GENERAL INTENT

Once notice to bargain has been given by a party, a message is conveyed that differences exist between the parties and a settlement is desired. In the first instance of bargaining, the parties attempt to reach a settlement by engaging in compromise activity since a compromise settlement will not only be perceived as equitable but will also be acceptable to the parties. AMO believes that this behavioural effect is important since it can have positive implications in furthering the relationship of the parties during the term of the collective agreement and over subsequent rounds of negotiation.

However, AMO realizes that the parties are not always able to reach a compromise settlement on their own. Studies on impasse situations reveal that there are four reasons why an impasse can occur. These are:

- a. the potential terms of settlement do not overlap;
- b. there is an overlap of settlement terms but because of methods used by the parties, no overlap now exists;
- c. there are several mutually acceptable outcomes but the parties have been unable to select one; or
- d. there is a lack of communication between the parties and/or a lack of information for assessing party positions.

Additionally, the cause of impasses may be rooted in the type of issue over which the parties are bargaining - namely issues of principle versus those requiring a redistribution of resources.

Issues based on principle are seldom resolved even with intervention since this would require undertaking the difficult task of altering the values and beliefs of the parties. In fact, current arbitration awards in various sectors show that arbitrators are generally unwilling to rule on such matters, referring them instead back to the parties for resolution. Resolving impasses over a redistribution of resources is not as complex since this exercise requires an assessment of costs versus benefits of positions taken - an exercise that utilizes more concrete and tangible evidence.

This brief discussion on the nature of settlements and the causes of impasse is important since the legal framework provided to the parties for the conduct of bargaining must not only assist them in attaining a settlement, but also do it in such a way that the end result is acceptable to the parties if a positive relationship between the parties is to be promoted.

AMO also notes that, except in instances where the bargaining of certain issues is regulated by legislation in order to preserve the rights of the parties or of the public, the primary purpose of bargaining legislation in Ontario is to provide the parties with a framework that is equitable to both parties for the resolution of impasses. In Appendix A to this report, AMO has compared the frameworks of the bargaining process currently found in the Ontario Labour Relations Act, the Crown Employees Collective Bargaining Act, the Hospital Labour Disputes Arbitration Act, the School Boards and Teachers Collective Negotiations Act and the Police Act.

Based on a comparison of the bargaining frameworks of other pieces of legislation in Ontario, AMO believes that the model legislation for the Police Act outlined in this report keeps in step with generally accepted principles of bargaining and impasse procedures found in these Acts in Ontario. While the AMO model does not contain all of the details found in other Acts, the overall intent is to sketch a model of bargaining that is more equitable to the parties and that promotes a process where the probability of a compromise settlement is greatly augmented.

CLAUSE-BY-CLAUSE RATIONALE OF AMO MODEL LEGISLATION

"association" means either,

- (i) an association whose membership is limited to one police force and comprises not less than 50 percent of the employees of the police force who are not senior officers or, where there is no such association, a majority of the employees not including senior officers, or,
- (ii) an association whose membership is limited to one police force and comprises not less than 50 percent of the senior officers of a police force or, where there is no such association, a majority of the senior officers.

"employer" means the council of the municipality that maintains a police department or, where there is a board of commissioners of police, the board of commissioners of police.

"party" means the employer or its designated representative, on the one hand, and a bargaining committee of members of the police force excluding senior officers duly established under this Act or a bargaining committee of senior officers duly established under this Act, as the case may be, on the other hand, and **"parties"** means the two of them.

"Minister" means the Solicitor General.

Rationale

These definitions would serve to clarify the terminology used in the Act where reference is made to the parties that bargain and the authority that the Ministry of the Solicitor General may exercise in regulating impasse situations.

The definition of "association" would clarify that senior officers are not to be part of the police force's bargaining unit but may form a separate unit for purposes of bargaining.

The definition of "employer" would clarify that the administration of a police force may be undertaken by a board of commissioners of police, or, in its absence, the council of the municipality.

The definition of "party" would make clear that the employer may assign the actual task of bargaining to designated representatives. Additionally, since senior officers (see Part II of this report for a recommended definition of "senior officers") are presently recognized as being separate for the purposes of bargaining, the definition should clarify that their bargaining committee is to be considered as separate.

Notice to Bargain

- 29 (1) Where no collective agreement exists or at any time after ninety days before the expiry of a collective agreement or within such further period as the parties may agree upon, a party may give the other written notice of its desire to bargain with a view to making or to the renewal, with or without modifications to the agreement then in operation or to the making of a new agreement.

Rationale

AMO recommends that wording such as this be used in the Act. At present, the wording of subsection 29(1) states that only employees are able to submit proposals for bargaining. However, bargaining legislation in other jurisdictions recognize that the employer may wish to table proposals as well.

Conciliation

- (1) Where bargaining has taken place in accordance with subsection 29(1) and 29(2) and,
- (i) either party has submitted a written notice to the Minister that an impasse has been reached during negotiations, or,
 - (ii) the Minister is of the opinion that an impasse has been reached during negotiations,
- the Minister shall appoint a conciliation officer.
- (2) (1) Where a conciliation officer is appointed, he or she shall confer with the parties and endeavour to effect an

agreement and shall, within fourteen days from the date of his or her appointment, report the result of the endeavour to the Minister.

- (iii) The period mentioned in subsection (i) may be extended by the agreement of the parties or by the Minister upon the advise of the conciliation officer that a collective agreement may be made with a reasonable time if the period is extended.
- (3) Where the conciliation officer reports to the Minister that the difference between the parties concerning the terms of an agreement have been settled or that an agreement cannot be reached, the Minister shall forthwith by notice in writting inform each party of the report.

Rationale

Subsection 31(1) presently reads:

- 31 (1) Where notice has been given under subsection 29(1), the Solicitor General, upon the request of either party, may appoint a conciliation officer.

and subsection 32(1) presently reads:

- 32 (1) Where, after bargaining under section 29, the council of a municipality or, where there is a board, the board, or the members of the police force or, where there is a bargaining committee, the bargaining committee is satisfied that an agreement cannot be reached, it may by notice in writing to the Solicitor General and to the other party require all matters in dispute to be referred to an arbitrator designated by the Solicitor General.

The suggested wording for the conciliation process would replace the above.

Subsection 31(1) now provides the Solicitor General with the option for the appointment of a conciliator and Section 32(1) now permits a party to unilaterally by-pass the conciliation stage and prematurely force bargaining to the arbitration stage. The effect of these two sections is

to dilute considerably the impact that conciliation may have in bringing the parties to a mutually acceptable agreement. Since either party can access a means of intervention that is binding and by so doing can prematurely delegate bargaining responsibilities to an outside party, the incentive to bargain is detracted.

AMO's recommendations would make conciliation mandatory but would still permit either party to access that stage. Only where conciliation is unsuccessful would the parties be permitted to access arbitration. This in fact, is similar to other bargaining legislation in Ontario where the parties cannot access a stage of "last resort" until other avenues have been exhausted.

Mediation

- (1) Where the Minister has given written notice to each party that an agreement cannot be reached, the Minister may appoint a mediator if,
 - (a) either party has requested that the Minister appoint a mediator, or,
 - (b) the Minister is of the opinion that the parties may benefit from the appointment of a mediator.

Rationale

After the parties have been granted sufficient time for conciliation, additional mediation could be provided on a voluntary basis.

Mediation that follows conciliation could assist those sets of negotiations where conciliation has significantly narrowed the range of disagreement but where the parties are themselves unable to formulate a settlement. Where the parties are very close to a settlement, mediation assistance could mean the difference between arriving at a voluntary settlement or having one imposed later by arbitration.

Arbitration

AMO has previously made a series of recommendations with respect to the administration of the arbitration process in general. In brief, these include:

- a. use of non-binding forms of intervention before arbitration;
- b. a single system of arbitration administered by a single agency consistent in procedures, formation, qualifications of the arbitrator, and costs;
- c. establishment of criteria to be used by arbitrators when making awards;
- d. a system of accrediting and training a core of full-time arbitrators;
- e. a system for the automatic review of arbitration awards to consider implications on public interest and public policy;
- f. recognition of a linkage between the arbitration process and the funding of public services;
- g. empowering the arbitrator to impose a term of agreement not to exceed a period of twenty-four months and, in any event, not less than one year.

While some of these recommendations have been incorporated into the model of bargaining presented here, reference should be made to AMO Report 86-12, "Compulsory and Binding Arbitration: A Proposal", for more detailed explanations.

AMO's model for arbitration under the Police Act is as follows:

- (1) Where thirty days has elapsed from the day each party was informed by the Minister of the conciliator's report and the parties have not made or renewed an agreement, as the case may be, and,
 - (i) the Minister has not been requested to appoint a mediator, or
 - (ii) the Minister has informed the parties that he does not intend to appoint a mediator, or
 - (iii) a mediator has been appointed and the mediator is of the opinion that the parties proceed to final and binding arbitration,

a board of arbitration of three members shall be constituted for the purpose of making an award that is binding upon

the parties and the Minister shall inform the parties that a board of arbitration is to be constituted.

Rationale

Placing arbitration as the last step in the model give recognition to its purpose - that is, as a means of final resort when all other non-binding avenues, mandatory and voluntary, have been exhausted. This type of language would ensure that arbitration is accessed by the parties only after they have had the opportunity to proceed through non-binding intervention. Neither party would be able to access it either prematurely or unilaterally.

Additionally, AMO is recommending that the Act replace the present single-arbitrator system for interest disputes with the more traditional three-member system. Since arbitration in a collective bargaining model is deciding upon the long-term and short-term interests of the parties, the three-member system accepts the fact that each party's interests should be adequately represented when the award is being formulated. In effect, the three-member system keep in line with the conventional wisdom that interest arbitration is an extension of the collective bargaining process.

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- (2) Each party shall appoint one member and the two members so appointed shall appoint a third member who shall be the chairman.
- (3) a. Where within thirty days from the day the Minister informed the parties that a board of arbitration is to be constituted, either party fails to appoint an able and willing member to the board of arbitration, the Minister may, upon the written request of the other party, appoint a member.

Rationale

This is similar to language found in all public sector bargaining legislation where a board of arbitration is to be constituted. The language has been presented in this fashion to conform with the overall model presented.

- (4) a. Where five days has elapsed from the day the second member was appointed and the two members of the board of arbitration appointed by or on behalf of the parties have failed to agree upon a third member who is able and willing to act, the Minister may, upon written notice of such failure give to him by either of the two members or either party, appoint a third member.
- b. Notwithstanding subsection (a), the Minister shall appoint a person to serve as the third member of a board of arbitration from amongst those persons who have not been considered by the other two members of the board of arbitration.

Rationale

Language similar to that in part (a) is standard but is presented in this form to conform with the overall model presented.

AMO believes language similar to that in part (b) is required since there is the possibility that the chairman appointed to the board of arbitration by the Minister may be an individual who was initially refused by the other two members of the board of arbitration. Under such circumstances, the impartiality of the chairman may be called into question should he or she have knowledge of which party refused him or her. Additionally, since it is important that the regulatory body preserve a perception of neutrality to both parties in all impasse procedures, such a development may lead one party to feel that it had been treated unfairly. As such, this could impede favourable labour relations.

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- (5) Each party shall identify to the other and submit to a board of arbitration not more than three issues in dispute between the parties, or such other number of issues to which the parties may have mutually agreed, and a board of arbitration shall, in making an award, not render a decision on any issue not submitted to it by either party.
- (6) Where, on the first day of proceedings, more than three issues in dispute between parties, or more than the

number of issues to which the parties agreed pursuant to subsection (5), as the case may be, have been submitted by a party to a board of arbitration for its consideration, the board of arbitration shall require that party to submit to it only three issues or only the number of issues to which the parties agreed pursuant to subsection (5), as the case may be, for consideration by the board of arbitration prior to the completion of the first day of proceedings.

- (7) Where an issue in dispute between the parties is not submitted by a party to a board of arbitration for the board's consideration and the parties cannot reach an agreement on the terms of resolution of such issue, the existing provision of the agreement to which the issue refers shall prevail during the term of the agreement and where no provisions exists in the collective agreement to which the issue refers, such matter shall not be included in an agreement and no board of arbitration constituted under this Part shall render an award on such matter.

Rationale

This language would ensure that the arbitration proceedings are not unnecessarily protracted with issues of a minor nature. Quite often arbitrators are inundated with large numbers of issues, some of which have no precedent or information for the arbitrator to use as a base in making an award. Under such circumstances, arbitrators refer these back to the parties for their resolution. Limiting the number of issues taken to arbitration would have the same effect. The parties would be forced to contend with minor issues by either settling them or tabling them to future rounds of bargaining. In short, the parties would be forced to re-assess and re-prioritize their proposals during times of impasse.

As well, arbitration may be the process to which the parties constantly resort if the process has some appeal. For example, where one party intends to drop a proposal from its bargaining agenda, the party may leave it as an item in dispute, believing that an arbitrator may include it in the final award. Limiting the number of issues could diffuse such circumstances and make the bargaining process more meaningful.

Finally, when arbitration is the final step and the parties believe that an arbitrator may split the differences on a majority of issues, the parties could become frozen to their positions and refuse to engage in compromise activity. Under these circumstances, the non-binding intervenor, armed only with the power of persuasion to effect a settlement, is likely to be less effective. Limiting the number of issues would ensure that the parties make the best possible use of the non-binding intervention.

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- (8) (1) In the conduct of proceedings before it and in rendering a decision in respect of a matter in dispute, the board of arbitration shall consider any factor that to it appears to be relevant to the matter in dispute including,
- a. the desirability to maintain appropriate relationships in the terms and conditions of employment as between different classes of employees,
 - b. general economic conditions in the community, the province and the nation and the policies of the Government of Ontario,
 - c. the interest and welfare of the public,
 - d. the terms and conditions of employment in other municipalities,
 - e. the needs of the council of the municipality for qualified employees,
 - f. the terms and conditions of employment in other occupations in the public and private sectors as the board of arbitration may consider relevant, and,
 - g. the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of services rendered.

Rationale

AMO has continually advocated the establishment of criteria to be used by arbitrators. As in its previous reports on this subject (see AMO Report 86-2, "Compulsory and Binding Arbitration: A Proposal"), AMO wishes to re-state that use of criteria ensures that the arbitrator has taken into account public interest, public policy, local economic conditions and local employment conditions. Criteria for arbitrators to consider can be found in the Crown Employees' Collective Bargaining Act. Additionally, well-reasoned awards would go far to developing public acceptance of the terms of the award and to educate the parties should similar issues be the subject of bargaining in the future.

- (9) The Minister shall maintain a current list of qualified persons who may serve as a third member on a board of arbitration and from which the two members appointed to a board of arbitration by or on behalf of the parties may select.

Rationale

This is the practice of many of the regulatory bodies overseeing bargaining legislation in Ontario. A large pool of qualified properly trained and accredited arbitrators would reduce the probability of unacceptable arbitrators and hence the requirement for Ministerial appointments. AMO believes that training of arbitrators is essential if the process is to be used fairly and consistently across all situations of arbitration.

- (10) a. The Minister shall maintain a schedule of fees specifying the fee that those persons duly appointed to a board of arbitration as a third member may charge.
- b. Each party shall assume its own costs of the arbitration proceedings and shall share the cost of the third member equally.

Rationale

In situations of firefighters interest arbitration, many municipalities have expressed their concern to the Ministry of the Solicitor General over the inconsistency in costs charged to both parties by arbitrators. At present, it is not uncommon for different arbitrators to charge different amounts where proceedings have been of the same duration. To ensure that this does not occur during situations of police arbitrations, AMO believes that language similar to that proposed would ensure a uniform cost. High costs incurred would be dictated only by the length of proceedings and not by the arbitrator selected or appointed.

**PART II: REQUIRED LEGISLATIVE AMENDMENTS FOR THE EFFECTIVE
ADMINISTRATION OF POLICE SERVICES**

- (1) Every collective agreement shall be deemed to provide that it is the exclusive function of the employer to manage, which function, without limiting the generality of the foregoing, includes the right to determine,
- (a) employment, appointment, complement, organization, assignment, work methods and procedures, kinds and location of equipment and classification of positions, and,
 - (b) promotion, demotion, transfer, lay-off, reappointment, merit system, training and development, and appraisal, and,
 - (c) subject to this Act and the Regulations thereto, demotion, dismissal, discipline and suspension,

and such matters shall not be the subject of collective bargaining nor come within the jurisdiction of an arbitrator or board of arbitration.

Rationale

It is not uncommon for public sector collective bargaining legislation to restrict the matters that can be negotiated in order to preserve certain rights of management since the manner in which the employer carries out its administrative function can have a direct and wide-scale impact on the interests and welfare of the public. A similar clause to the one proposed above can be found in the Crown Employees Collective Bargaining Act.

- (2) "senior officer" means a member of a police force of the rank of inspector or higher, but shall not include a civilian employee who is employed in a confidential capacity relating to personnel or labour relations.

Rationale

It is important that a definition of senior officer clearly delineates management from non-management members of the police force in order to ensure that no conflict of interest exists when managerial authority is required. By this same line of reasoning, civilian employees who exercise confidential functions related to matters of personnel and labour relations should not be permitted to form or be part of a bargaining unit. This latter point is currently found in the Ontario Labour Relations Act. However, this definition would continue to permit senior employees of the police force to engage in collective bargaining separate and apart from other members of the police force.

(3) With respect to police commissions:

- (a) all members of a police commission shall be appointed by municipal council,**
- (b) members of the municipal council may form a majority on the police commission at the discretion of council with a provision for the appointment of non-elected persons,**
- (c) the police commission should include the head of council, and,**
- (d) council should approve the annual budget of the commission.**

Rationale

AMO believes that as a result of the sensitive nature of policing, police commissions should be retained to oversee this service. Nevertheless, accountability must be ensured. In order to achieve greater responsiveness, the Association recommends that all members of police commissions be appointed by council. It is proposed that members of the municipal council may form a majority on the police commission at the discretion of council, with a provision for the appointment of non-elected persons. The police commission preferably should include the head of council. The possibility for appointing non-elected persons would give the municipality the chance to appoint members with suitable expertise. This number may vary according to local circumstance.

As municipal taxpayers provide most of the financing for policing within their municipalities, AMO believes that council should approve the annual budget of the commissions.

- (4) AMO recommends that Sections 16 to 20 of Regulation 791 be amended to provide that the board of commissioners or the committee of council, as the case may be, be able to alter the punishment as it deems just whether or not an appeal has been made.

Rationale

Regulation 791 is reproduced in Appendix B.

Under the provisions of Section 16 to 20, the decision of a presiding officer cannot be altered unless an appeal has been launched by the officer upon whom the discipline has been imposed. In effect, council, or the board, can only confirm or not confirm the decision of the presiding officer where no appeal has been made.

AMO believes that this binds council or the board to substitute lesser penalties or impose stricter penalties where warranted.

The current provisions of sections 16 to 20 cast the council, or the board, in a role similar to that of a board of arbitration in a rights dispute. That is, the power to substitute penalties can only be made when the matter is brought before them formally by the officer upon whom discipline was imposed.

However, given that the final step for appeal is actually the Ontario Police Commission, that the council or the board is the employer and that the presiding officer is an employee of the employer carrying out certain duties on behalf of the employer, the ability to substitute penalties should be available to council or the board at any time.

- (5) Amend section 27(b) and (e) of Regulation 791 to read:

27. No chief of police, constable or other police officer is subject to any penalty under this Part except after a

hearing and final disposition of a charge on appeal as provided under this Part, or after the time for appeal has expired, but nothing herein affects the authority of a board or council,

- (b) to dispense with the services of any police officer within eighteen months of having become a police officer of that force,
- (e) to discharge or place on retirement, if he or she is entitled thereto, any member of the force who, on the evidence of two legally qualified medical practitioners selected by the Board or council, is, due to mental or physical disability, incapable of performing his or her duties in a manner fitted to satisfy the requirement of his or her position but any decision of the Board or council made pursuant to this clause may be appealed to the Commission.

Rationale

With respect to subsection 27(b), AMO is recommending that the language clarify that the probationary period is not limited to constables and that the action by the council, or board, to dispense with services is limited to one force.

With respect to subsection 27(e), the current wording does not stipulate who makes the selection of two legally qualified medical practitioners. Since it is the council, or board, that must make the final decision and since the decision should not be tainted in any way by the medical evidence, the selection of the practitioners should be at the discretion of the council or board.

(6) Amend Section 32 of Regulation 791 to read:

32. No chief of police, constable or other police officer shall be appointed to a police force unless he or she:

- (a) Is a Canadian citizen;

- (b) is twenty-one years of age or over;
- (c) certified by a legally qualified medical practitioner to be in good health, mentally and physically, and fit for duty as a member of a police force;
- (d) produces satisfactory proof of having completed at least a grade 12 secondary school education or its equivalent; and
- (e) is of good moral character.

Rationale

AMO believes that the basic requirements for becoming employed with a police force need to be revised to better reflect current hiring practices in other jurisdictions and increased public sensitivity for a better qualified police force.

In part (e) AMO is recommending that the words and habits be deleted. While it is important that the public perceive the police as being of a character consistent with their duties in upholding the law, the issue of having good habits is too vague and subjective in the absence of defining exactly what habits are considered to be good.

APPENDIX A

A BRIEF OUTLINE OF COMMON ELEMENTS FOUND IN BARGAINING LEGISLATION IN ONTARIO

Figure 1 shows a general framework for bargaining, and Figures 2 to 5 show the bargaining framework of five Ontario acts:

1. the Ontario Labour Relations Act,
2. the Crown Employees Collective Bargaining Act,
3. the Hospital Labour Disputes Arbitration Act,
4. the School Boards and Teachers Collective Negotiations Act,
and

Figure 6 shows the framework for the Police Act and Figure 7 illustrates AMO's proposed model of collective bargaining for the Police Act.

AMO notes that there are common elements to these Acts.

First, each Act has at least one provision for the use of a non-binding form of intervention. This appears to be in keeping with the view that once an impasse has been reached, the parties need assistance at re-directing their communications efforts and to diffuse any emotions heightened by bargaining to this point. Since these interventions are of a non-binding nature, any settlement reached will still be a compromise between the parties and therefore acceptable. The School Boards and Teachers Collective Negotiations Act takes this one step further with the imposition of fact finding, premised on the belief that assistance in the form of neutral information can aid the parties to confirm, re-assess or justify positions taken.

A second common element is found in the first four Acts. In these Acts, there is at least one form of non-binding intervention that is "mandatory". Making the process mandatory has merit since the parties should be given the opportunity to re-focus their efforts toward the issues and away from emotional build-up that may have resulted from reaching an impasse and that could lead them to taking drastic and costly measures. The conventional wisdom is that a mandatory non-binding process can effectively serve as a "cooling-off" period and permit the parties to then continue on to making a compromise settle-

ment. In the first four Acts, a party is not permitted to unilaterally access the last step of intervention in the bargaining process. Only with mutual agreement and/or when certain conditions have been met can such interventions be used. In effect, the process temporarily diffuses the premature use of costly threat tactics.

A third common element to the first four Acts is granting the parties the option for additional "voluntary" non-binding intervention. On the one hand, building several non-binding impasses procedures into the model permits the parties with every opportunity to make a compromise settlement before a binding award is imposed or sanctions permitted. On the other hand, such models give recognition to the fact that arbitration and sanctions are interventions of a last resort, to be used only when all other avenues have been exhausted.

Finally, the Acts share the requirement that the regulatory body governing the Act play a role in providing third party neutrals, neutral information where possible, and advice. As well, the first four Acts grant the regulatory body with the authority to impose non-binding procedures where it is of the opinion that such intervention may be beneficial to the parties.

"APPENDIX B"

REGULATION 791 UNDER THE POLICE ACT

REGULATION 791

under the Police Act

GENERAL—DISCIPLINE

PART I

MUNICIPAL POLICE FORCES

1. This Part applies to a police force established under Part II of the Act. R.R.O. 1970, Reg. 680, s. 1.

2. In this Part,

- (a) "agent" means a member of a police force or a *bona fide* member of an association or the Police Association of Ontario who has had at least five years experience with a police force governed by the Act;
- (b) "board" means a board of commissioners of police;
- (c) "chief of police" includes an acting chief of police;
- (d) "code" means the code of offences set out in the Schedule;
- (e) "committee of council" means a committee composed of the head or acting head of council and two other members thereof appointed by council;
- (f) "council" includes the trustees of a police village;
- (g) "counsel" means a barrister and solicitor authorized to practise in the courts of Ontario;
- (h) "presiding officer" means a chief of police, an acting chief of police, or an officer designated by the chief of police under section 3. R.R.O. 1970, Reg. 680, s. 2.

3. The chief of police may designate the deputy chief of police or, where the rank of inspector is established, any other officer of the rank of inspector or higher, who may exercise the powers and perform the duties of the chief of police in the hearing and disposition of charges. R.R.O. 1970, Reg. 680, s. 3.

DISCIPLINE

4. The code applies to every police force. R.R.O. 1970, Reg. 680, s. 4.

5.—(1) Where a constable or other police officer is charged with an offence against the code, the charge shall be in writing on a charge sheet and a true copy of the charge sheet shall be served, as soon as is practicable, upon the person charged, together with a statement of the allegations upon which the charge is founded.

(2) The charge sheet shall be prepared in accordance with Form 1 but may be varied to suit the case, and forms to the like effect shall be deemed to be good, valid and sufficient.

(3) The charge sheet shall be signed by the chief of police, or an officer designated by him, and shall show the date upon which it is so signed.

(4) All charges shall, where practicable, be included in one charge sheet, but where it is considered desirable the charges may be recorded in separate charge sheets.

(5) Where there is more than one charge in a charge sheet, the charges shall be numbered.

(6) A charge sheet shall be prepared for each person charged.

(7) Persons charged with the same offence may be tried jointly, notwithstanding they are charged on separate charge sheets.

(8) Each charge in the charge sheet shall,

(a) allege one offence only; and

(b) be divided into two parts as follows:

1. A statement of the offence with which the accused is charged.
2. A statement of the particulars of the act, omission, conduct, disorder or neglect constituting the offence.

(9) Every statement of the particulars of an offence in a charge sheet shall include sufficient details to enable the accused to determine exactly the offence with which he is charged, so that he may prepare his defence and direct it to the occasion and events indicated in the charge.

(10) A statement of the particulars of an offence shall, where practicable, include an allegation of the place, date and time of the alleged commission of the offence.

(11) The charge shall specifically designate whether the offence is minor or major.

(12) The charge sheet shall state the time and place that the person charged is to appear before the presiding officer, and such time shall be not sooner than seventy-two hours after the person charged has been served with a true copy of the charge sheet. R.R.O. 1970, Reg. 680, s. 5.

6. Any constable or other police officer may lay a complaint before a chief of police or any officer designated by him under section 3, alleging an offence in accordance with the code and the chief of police or designated officer shall consider the allegations in the complaint and, where he considers that the allegations so warrant, he shall sign the charge sheet. R.R.O. 1970, Reg. 680, s. 6.

7. Where a person charged appears before a presiding officer, he shall first be asked whether he requires further time to consider his plea and,

- (a) where he indicates that he does not require further time to consider his plea, he shall then be asked whether he pleads guilty or not guilty to each offence contained in the charge sheet; or
- (b) where he requests further time to consider his plea, a reasonable adjournment shall be granted and a new date set when he shall appear before the presiding officer, at which time he shall be asked whether he pleads guilty or not guilty to each offence contained in the charge sheet. R.R.O. 1970, Reg. 680, s. 7.

8.—(1) Where the person charged pleads guilty to an offence contained in the charge sheet, the presiding officer, after hearing sufficient evidence to inform himself as to the circumstances surrounding the commission of the offence and upon being satisfied as to the guilt of the person charged, may find him guilty and impose a punishment authorized by this Part.

(2) Where the presiding officer is not satisfied as to the guilt of the person charged, he shall direct that a plea of not guilty be entered.

(3) The person charged may, at any time before the presiding officer renders his verdict, change his plea to that of guilty or not guilty, as the case may be.

(4) The presiding officer may postpone the imposition of punishment for a period of time not longer than eight days. R.R.O. 1970, Reg. 680, s. 8.

9. Where a person charged pleads not guilty to an offence contained in the charge sheet, the presiding officer shall fix the time and place for the hearing of the charge and in fixing the time for the hearing, he shall allow the person charged a reasonable opportunity to prepare his defence. R.R.O. 1970, Reg. 680, s. 9.

10. The person charged may inform the presiding officer in writing of the names of the members of the police force whom he desires to give evidence at the hearing and the chief of police shall order those members to be present at the hearing. R.R.O. 1970, Reg. 680, s. 10.

11. The hearing and final disposition of a charge by way of review, confirmation or appeal shall be proceeded with as expeditiously as possible and, where undue delay occurs, the person charged may make application,

- (a) to the board or, where there is no board, to the committee of council; or
- (b) to the Commission,

to have the charge quashed and the board, committee of council or the Commission, as the case may be, may order that the charge be quashed and thereupon the person charged shall be deemed to have been acquitted of the charge. R.R.O. 1970, Reg. 680, s. 11.

12. The presiding officer may, in his discretion, before or during a hearing on notice to the person charged, adjourn the hearing to a time and place to be appointed, but no such adjournment shall unduly delay the hearing. R.R.O. 1970, Reg. 680, s. 12.

13.—(1) A chief of police may designate a counsel, constable or other police officer who shall have conduct of the hearing against the person charged and, in the conduct of the hearing, the person so designated may,

- (a) examine and cross-examine witnesses;
- (b) sum up the evidence in support of the charge; and
- (c) before the final verdict is rendered, at the direction of or with the consent of the chief of police, withdraw the charge.

(2) The constable or other police officer designated under subsection (1) shall be of equal rank to or higher rank than the person charged.

(3) The person charged is entitled to make his full answer and defence to the charge and, for such purpose, may examine and cross-examine witnesses and make representations on his behalf, either personally or by his counsel or agent. R.R.O. 1970, Reg. 680, s. 13.

14. A person charged may admit any fact alleged against him for the purpose of dispensing with proof thereof. R.R.O. 1970, Reg. 680, s. 14.

15. Where a person charged is acquitted, no reference to that charge or acquittal shall be entered in his personal record. R.R.O. 1970, Reg. 680, s. 15.

TRIAL OF MINOR OFFENCES

16.—(1) Where the offence charged is a minor offence,

(a) the evidence shall be given under oath but need not be taken down in writing; and

(b) the person charged shall have an opportunity of,

(i) hearing the evidence against him,

(ii) calling witnesses, whether members of a police force or any other persons, in his defence, and

(iii) giving evidence as a witness on his own behalf.

(2) Where the person charged absconds or refuses or neglects without good and sufficient cause to attend the hearing at the time and place fixed, the case may be decided in his absence.

(3) Where the presiding officer has heard the person charged, the witnesses and any representations made, he shall, after considering the matter, convict the person charged or dismiss the charge, as the case may be.

(4) A person found guilty of a minor offence is liable to,

(a) an admonition; or

(b) forfeiture of leave or days off not exceeding five days; or

(c) forfeiture of pay not exceeding three days pay.

(5) The decision of the presiding officer, including the punishment imposed, if any, shall be in writing and a copy shall forthwith be served upon the person charged.

(6) Where the presiding officer is not the chief of police he may refer, and on the request of the chief of police shall refer, the charge for hearing to the chief of police or another presiding officer designated by him, and the person charged shall be notified of the time and place fixed for the hearing.

(7) Where the presiding officer designated by the chief of police hears and decides a charge and imposes a punishment, the chief of police shall, within seven days, review the decision and punishment and either confirm or quash the conviction and he may confirm, mitigate, commute or remit any or all punishments imposed and shall forthwith notify the convicted person in writing of his decision.

(8) Where the chief of police fails to review the decision and punishment within seven days, he shall be deemed to have confirmed both the decision and punishment.

(9) A person found guilty of a minor offence may appeal his conviction or the punishment imposed, or both, as confirmed or altered by the chief of police,

(a) where there is a board, to the board; or

(b) where there is no board, to the committee of council.

(10) The appeal may be made by serving a notice thereof in writing upon,

(a) the chief of police; and

(b) where there is a board, the secretary of the board; or

(c) where there is no board, the clerk of the municipality,

not later than fifteen days after the time of the service of the copy of the decision appealed from.

(11) The board or committee of council may, before or after the expiration of the time for service of a notice of appeal, extend the time for service for a further period not exceeding thirty days within which service may be effected.

(12) Where the chief of police is served with a notice of appeal, he shall forward the charge sheet to the board or committee of council and the board or committee shall decide the appeal by holding a hearing *de novo*, and for such purpose the provisions of this Part that apply to the initial hearing of a charge apply with necessary modifications to a hearing *de novo*.

(13) There shall be a verbatim record of every hearing under subsection (12).

(14) After the time for appeal has expired any punishment imposed under this section is subject to the approval of the board or committee of council, as the case may be, who may confirm, mitigate, commute or remit any or all punishments imposed and shall forthwith notify the convicted person in writing of its decision.

(15) A person convicted of a minor offence may appeal his conviction or the punishment imposed, or both, as confirmed or altered by the board or committee of council on appeal, to the Commission. R.R.O. 1970, Reg. 680, s. 16.

TRIAL OF MAJOR OFFENCES

17.—(1) Where the offence charged is a major offence,

- (a) the witnesses shall be sworn;
- (b) the evidence shall be recorded verbatim by some reliable means; and
- (c) the person charged shall have an opportunity of,
 - (i) hearing the evidence against him,
 - (ii) calling witnesses, whether members of a police force or any other person, in his defence, and
 - (iii) giving evidence as a witness on his own behalf.

(2) Where the person charged absconds or refuses or neglects without good and sufficient cause to attend the hearing at the time and place fixed, the case may be decided in his absence.

(3) When the presiding officer has heard the person charged, the witnesses and any representations made, he shall, after considering the matter, convict the person charged or dismiss the charge, as the case may be.

(4) The decision of the presiding officer, including the punishment imposed, if any, shall be in writing and a copy shall forthwith be served upon the person charged.

(5) Where the presiding officer is not the chief of police, he may refer, and on request of the chief of police shall refer, the charge for hearing to the chief of police or another presiding officer designated by him, and the person shall be notified of the time and place fixed for the hearing.

(6) The chief of police may refer the charge for hearing before the board, or where there is no board, the committee of council and the provisions of this Part that apply to the hearing of a charge by the chief of police or a presiding officer designated by him apply with necessary modifications to the hearing of a charge by the board or committee of council.

(7) Where the presiding officer designated by the chief of police hears and decides a charge and imposes a punishment, the chief of police shall, within seven days, review the decision and punishment and either confirm or quash the conviction and he may confirm, mitigate, commute or remit any or all punishments imposed and shall forthwith notify the convicted person in writing of his decision.

(8) Where the chief of police fails to review the decision and punishment within seven days, he shall be deemed to have confirmed both the decision and punishment. R R O. 1970, Reg. 680, s. 17

18.—(1) Upon notice to the person charged, other than a chief of police, a board, or where there is no board, a committee of council, may designate a county court judge, a district court judge or a provincial court judge (criminal division) who consents to the designation to hear a charge or appeal that the board or committee of council may hear.

(2) The provisions of this Part that apply to the hearing of a charge or an appeal by a board or committee of council apply with necessary modifications to a hearing by a judge designated under subsection (1).

(3) The judge designated under subsection (1) shall hear and determine the charge and where the accused is found guilty of an offence against the code shall impose a punishment authorized by this Part or shall hear and determine the appeal, as the case may be.

(4) The decision of the judge shall be deemed to be the decision of the board or committee of council that designated such judge. R R O. 1970, Reg. 680, s. 18.

19.—(1) A person found guilty of a major offence on a charge heard and determined by the chief of police or a presiding officer designated by him may appeal his conviction or the punishment imposed or both, as confirmed or altered by the chief of police,

- (a) where there is a board, to the board; or
- (b) where there is no board, to a committee of council.

(2) The appeal may be made by serving a notice thereof in writing not later than fifteen days after the time of the service of the copy of the decision appealed from to,

- (a) the chief of police; and
- (b) where there is a board, the secretary of the board; or
- (c) where there is no board, the clerk of the municipality.

(3) The board or committee of council may, before or after the expiration of the time for service of a notice of appeal, extend the time for service for a further period not exceeding thirty days within which service may be effected.

(4) Where the chief of police is served with a notice of appeal under this section, he shall forward to the board or committee of council, as the case may be, the record of the hearing including all documents, evidence and exhibits considered at the hearing, and the board or committee of council shall decide the appeal from the record but may, in special circumstances, hear such evidence as the board or committee of council considers advisable.

(5) The board or committee of council on appeal may,

- (a) confirm the conviction;
- (b) quash the conviction;
- (c) alter the punishment imposed as it considers just; or
- (d) order a new hearing of the charge.

and shall forthwith notify the appellant in writing of its decision. R.R.O. 1970, Reg. 680, s. 19.

20.—(1) After the time for appeal has expired any punishment imposed under this section is subject to the approval of the board or committee of council, as the case may be, who may confirm, mitigate, commute or remit any or all punishments imposed and the board or committee of council shall forthwith notify the convicted person in writing of its decision.

(2) A person found guilty of a major offence is liable to,

- (a) dismissal; or
- (b) be required to resign, and in default of resigning within seven days, to be summarily dismissed from the force; or
- (c) reduction in rank or gradation of rank; or
- (d) forfeiture of leave or days off not exceeding twenty days; or
- (e) forfeiture of pay not exceeding five days pay; or
- (f) a reprimand, which may be imposed in lieu of or in addition to any other punishment imposed.

(3) A person convicted of a major offence may appeal his conviction or the punishment imposed, or both, as confirmed or altered by the board or committee of council on appeal, to the Commission. R.R.O. 1970, Reg. 680, s. 20.

FORFEITURE OF PAY

21. Where a penalty of more than one day's forfeiture of pay is imposed, it shall be deemed to mean the forfeiture of not more than one day's pay in each pay period until the full penalty has been paid but, where the person convicted leaves the police force, the whole amount of the forfeiture of pay then remaining may be deducted from any pay then due. R.R.O. 1970, Reg. 680, s. 21.

TRIAL OF CHIEF OF POLICE

22. Section 5 applies with necessary modifications to a charge against a chief of police. R.R.O. 1970, Reg. 680, s. 22.

23.—(1) A charge against a chief of police may be laid by the chairman of a board or a member thereof, or where there is no board, by the head or acting head of council.

(2) The board or, where there is no board, the committee of council shall hear any charge against a chief of police.

(3) The board, or where there is no board, the committee of council may designate, and on the request of a chief of police so charged shall designate, a county court judge, a district court judge or a provincial judge (criminal division) to hear any charge that the board or committee of council may hear, but the judge designated by a board shall not be a member of the board.

(4) The judge so designated shall determine the charge and where the chief of police is found guilty of an offence against the code shall impose a punishment authorized by this Part.

(5) The decision of the judge shall be deemed to be the decision of the board or committee of council that designated such judge.

(6) The provisions of this Part that apply to the hearing of a charge against a constable or police officer in respect of a major offence, including the right to counsel, apply with necessary modifications to the hearing of a charge against a chief of police.

(7) A chief of police who is found guilty of an offence is liable to,

- (a) dismissal; or
- (b) be required to resign, and in default of resigning within seven days, to be summarily dismissed from the force; or
- (c) reduction in rank; or
- (d) reprimand.

(8) A chief of police convicted of an offence may appeal his conviction or the punishment imposed, or both, to the Commission. R.R.O. 1970, Reg. 680, s. 23.

APPEALS TO THE COMMISSION

24.—(1) In the case of a conviction of an offence, a notice of appeal to the Commission shall be in writing, directed to the chairman of the Commission and shall set forth the conviction, the punishment imposed and the grounds on which the appeal is based.

(2) The notice of appeal shall be served on the secretary of the board, where there is a board, or where there is no board, on the clerk of the municipality, and the Commission not later than fifteen days after the time the appellant receives notice of his conviction and the punishment imposed, as confirmed or altered on appeal.

(3) The Commission may, before or after the expiration of the time for service of a notice of appeal, extend the time for service for a further period not exceeding thirty days within which service may be effected.

(4) Where a notice of appeal is served on the secretary of the board or the clerk of the municipality, the board or committee of council shall forward to the Commission the original charge sheet with particulars of the conviction and the punishment imposed, and the record of the hearing, including all documents, evidence and exhibits.

(5) The Commission shall notify all parties of the time and place for the hearing of the appeal.

(6) The Commission shall decide the appeal from the record but may, in special circumstances, hear such evidence as the Commission considers advisable.

(7) The decision of the Commission is final.

(8) At the hearing of the appeal, the appellant, the chief of police and the board or committee of council, as the case may be, are entitled to appear and to be represented by counsel or agent and to present their argument.

(9) On the hearing of an appeal against a conviction or the punishment imposed, or both, the Commission may,

- (a) dismiss the appeal;
- (b) allow the appeal and quash the conviction and punishment imposed;
- (c) vary the punishment imposed as it considers just;
- (d) affirm the punishment imposed;
- (e) substitute a decision that in its opinion should have been reached; or
- (f) order a new hearing of the charge. R.R.O. 1970, Reg. 680, s. 24.

WITNESS FEES

25. Witnesses at a hearing under this Part, other than members of a police force, shall be paid by the municipality fees and expenses as follows:

- 1. Attending the hearing, each day \$6

2. Where a witness travels by private automobile, 10 cents a mile each way for each mile necessarily travelled between his place of residence and the place where the hearing is held but where the hearing is held in the municipality where the witness resides, 75 cents.

3. Where a witness travels by means other than private automobile, a sum equal to the amount of the fare actually paid for the transportation from his place of residence to the place where the hearing is held, and return.

4. Where a witness is required to attend the hearing on more than one day and returns to his place of residence at night, the travelling allowance mentioned in paragraph 2 or 3, as the case may be, is payable in respect of each day's attendance.

5. Where a witness resides elsewhere and in the opinion of the person conducting the hearing it is desirable that the witness remain overnight at the place where the hearing is held, a sum actually and reasonably paid by him for living expenses. R.R.O. 1970, Reg. 680, s. 25.

SUSPENSIONS

26.—(1) Where a constable or other police officer is suspected of or is charged with a contravention of an Act of the Parliament of Canada or of the Legislative Assembly of the Province of Ontario, or is suspected of or charged with an offence against the code, the chief of police may suspend him from duty, but where the constable or other police officer is not charged within forty-eight hours after being suspended, he shall be returned to duty.

(2) The officer in charge of a station may exercise the powers of suspension of a chief of police under subsection (1), subject to such suspension being subsequently confirmed by the chief of police within twenty-four hours.

(3) Where a constable or other police officer is convicted of an offence for which a term of imprisonment is imposed, he may, notwithstanding any appeal, be suspended without pay.

(4) Subject to subsection (3), suspension of a constable or other police officer shall cease on the determination of the charge or charges against him.

(5) The chief of police may at any time revoke the suspension and order that the constable or other police officer be returned to duty.

(6) Where a police force has no chief of police, the acting chief of police, chairman of the board, or head or acting head of a council shall exercise the disciplinary powers and perform the duties of a chief of

police in suspending any constable or other police officer or in hearing any charge of an offence against the code, and for such purpose shall be deemed to be a chief of police.

(7) Where a chief of police is suspected of or is charged with a contravention of an Act of the Parliament of Canada or of the Legislative Assembly of the Province of Ontario, or suspected or charged with an offence against the code, the chairman of the board or a member thereof or, where there is no board, the head or acting head of council may suspend him from duty, but where the chief of police is not charged within forty-eight hours after being suspended, he shall be returned to duty.

(8) Where a chief of police is convicted of an offence for which a term of imprisonment is imposed, he may, notwithstanding any appeal, be suspended without pay.

(9) Subject to subsection (8), suspension of a chief of police shall cease on determination of the charge or charges against him.

(10) The chairman of the board or, where there is no board, the head or acting head of council may at any time revoke the suspension of a chief of police and order that he be returned to duty. R.R.O. 1970, Reg. 680, s. 26.

GENERAL

27. No chief of police, constable or other police officer is subject to any penalty under this Part except after a hearing and final disposition of a charge on appeal as provided by this Part, or after the time for appeal has expired, but nothing herein affects the authority of a board or council,

- (a) subject to the consent of the Commission, to dispense with the services of any member of a police force for the purpose of reducing the size of or abolishing the police force, where the reduction or abolition is not in contravention of the Act;
- (b) to dispense with the services of any constable within eighteen months of his becoming a constable;
- (c) to make rules or regulations for the retirement of members of the police force who are entitled to a pension under a pension plan established for the members of the force, under which the municipality contributes an amount not less than 5 per cent of the amount of the salaries of the members participating in the plan, and to retire the members in accordance with those rules or regulations;
- (d) to act in accordance with a report or recommendation of the Commission made under section 28; or

(e) to discharge or place on retirement, if he is entitled thereto, any member of the force who, on the evidence of two legally qualified medical practitioners is, due to mental or physical disability, incapable of performing his duties in a manner fitted to satisfy the requirements of his position but any decision of the board or council made pursuant to this clause may be appealed to the Commission. R.R.O. 1970, Reg. 680, s. 27; O. Reg. 296/73, s. 1.

28. Where the Commission or any member thereof holds an investigation or inquiry under subsection 58 (1) of the Act and reports that any person referred to in the said subsection does not perform, or is incapable of performing, his duties in a manner fitted to, or his conduct is such as not to, satisfy the requirements of his position, the council or, where there is a board, the board, may,

- (a) reduce the person in rank and in pay in accordance with the rank to which he is reduced;
- (b) where the report is concurred in by all members of the Commission and it is so recommended therein, dismiss the person concerned or place him on retirement if he is entitled thereto. R.R.O. 1970, Reg. 680, s. 28.

29. Except with the consent of the chief of police, granted in accordance with the by-laws of the board or council, as the case may be, no member of a police force shall engage directly or indirectly in any other occupation or calling, and he shall devote his whole time and attention to the service of the police force. R.R.O. 1970, Reg. 680, s. 29.

30. To enable the Commission to carry out its duties under the Act, the members of police forces shall give their assistance and co-operation to the Commission and its members and staff. R.R.O. 1970, Reg. 680, s. 30.

31.--(1) No chief of police, constable or other police officer shall take or act upon any order, direction or instruction of a member of a board or council.

(2) Notwithstanding the code, a chief of police, constable or other police officer shall report forthwith to the Commission the particulars of any order, direction or instruction that he is prohibited from taking or acting upon under subsection (1), and the Commission shall report the particulars to the Solicitor General. R.R.O. 1970, Reg. 680, s. 31.

QUALIFICATIONS

32. No chief of police, constable or other police officer shall be appointed to a police force unless he,

- (a) is a Canadian citizen or a British subject;

- (b) is eighteen years of age or over;
- (c) is certified by a legally qualified medical practitioner to be in good health, mentally and physically, and fit for duty as a member of a police force;
- (d) produces satisfactory proof of having successfully completed at least two years secondary school education or its equivalent; and
- (e) is of good moral character and habits. O. Reg. 970/74, s. 1.

UNIFORM AND EQUIPMENT

33. All articles of uniform and equipment necessary for the performance of duty shall be provided by the municipality, but, where damage or loss occasioned by the fault of a member of a police force, the cost of replacement shall be borne by him. R.R.O. 1970, Reg. 680, s. 33.

BOARD OF COMMISSIONERS OF POLICE

34.—(1) A municipality shall pay to each member of the board who is designated by the Lieutenant Governor in Council or appointed by the Solicitor General,

- (a) in cities having a population exceeding 500,000 according to the last revised assessment roll, not less than \$1,000 a year;
 - (b) in cities having a population exceeding 100,000 and not exceeding 500,000 according to the last revised assessment roll, not less than \$500 a year;
 - (c) in cities having a population not exceeding 100,000 according to the last revised assessment roll, not less than \$300 a year; and
 - (d) in municipalities other than cities, not less than \$100 a year.
- (2) A board shall hold at least one regular meeting every three months. R.R.O. 1970, Reg. 680, s. 34.

OATH OF AUXILIARY MEMBER

35. The oath to be taken and subscribed to by an auxiliary member of a police force shall be in Form 3. R.R.O. 1970, Reg. 680, s. 35.

PART II

ONTARIO PROVINCIAL POLICE FORCE

36. This Part applies to the Ontario Provincial Police Force. R.R.O. 1970, Reg. 680, s. 36.

37. In this Part,

- (a) "agent" means a member of the Force or a *bona fide* member of an association or the Police Association of Ontario who has had at least five years experience with a police force governed by the Act;
- (b) "counsel" means a barrister and solicitor authorized to practise in the courts of Ontario;
- (c) "Force" means the Ontario Provincial Police Force;
- (d) "presiding officer" means the Commissioner or an officer designated by him under subsection 38 (1) or a judge designated under subsection 38 (3). R.R.O. 1970, Reg. 680, s. 37; O. Reg. 10/71, s. 1.

38.—(1) The Commissioner may designate a Deputy Commissioner, an Assistant Commissioner, or any other officer of the rank of Superintendent or higher, who may exercise the powers and perform the duties of the Commissioner in the hearing and disposition of charges, provided that on a plea of not guilty to a major offence a Superintendent shall refer the matter to the Commissioner who may, subject to subsections (2) and (3), hear the case himself or designate a Deputy Commissioner or an Assistant Commissioner to hear the case against the person charged.

(2) Where a plea of not guilty is entered to a major offence, the Commissioner may refer the matter to the Solicitor General with a recommendation that he appoint a judge to hear the case.

(3) Where the Solicitor General receives a recommendation under subsection (2), or in any case where he considers it proper to do so, he may, upon notice to the Commissioner and the person charged, designate a county court judge or a district court judge who consents to the designation to hear the charge.

(4) The provisions of this Part that apply to the hearing of a charge by the Commissioner apply with necessary modifications to a hearing by a judge designated under subsection (3).

(5) The decision of the judge shall be deemed to be the decision of the Commissioner. O. Reg. 10/71, s. 2.

DISCIPLINE

39. The code of offences against discipline in the Schedule apply to the Force and in the code for the purposes of this Part "Chief of Police" means the Commissioner. R.R.O. 1970, Reg. 680, s. 39.

40.—(1) Where a constable or other police officer is charged with an offence against the code, the charge shall be in writing and a true copy of the charge sheet shall be served as soon as is practicable upon the person charged, together with a statement of the allegations upon which the charge is founded.

(2) The charge sheet shall be prepared in accordance with Form 2 but may be varied to suit the case, and forms to the like effect shall be deemed to be good, valid and sufficient.

(3) The charge sheet shall be signed by the Commissioner or an officer designated by him and shall show the date upon which it is so signed.

(4) All charges shall, where practicable, be included in one charge sheet but, where it is considered desirable, the charges may be recorded in separate charge sheets.

(5) Where there is more than one charge in a charge sheet, the charges shall be numbered.

(6) A charge sheet shall be prepared for each person charged.

(7) Persons charged with the same offence may be tried jointly, notwithstanding they are charged on separate charge sheets.

(8) Each charge in the charge sheet shall,

(a) allege one offence only; and

(b) be divided into two parts as follows:

1. A statement of the offence with which the accused is charged.

2. A statement of the particulars of the act, omission, conduct, disorder or neglect constituting the offence.

(9) Every statement of the particulars of an offence in a charge shall include sufficient details to enable the accused to determine exactly the offence with which he is charged, so that he may prepare his defence and direct it to the occasion and events indicated in the charge.

(10) A statement of the particulars of an offence shall, where practicable, include an allegation of the place, date and time of the alleged commission of the offence.

(11) The charge shall specifically designate whether the offence is minor or major.

(12) The charge sheet shall state the time and place that the person charged is to appear before the presiding officer, and such time shall be not sooner than seventy-two hours after the person charged has been served with a true copy of the charge sheet. R.R.O. 1970, Reg. 680, s. 40.

41. Any constable or other officer may lay a complaint before the Commissioner or any officer designated by him under section 38, alleging an offence in accordance with the Code, and the Commissioner or designated officer shall consider the allegations in the complaint and, where he considers that the allegations so warrant, he shall sign the charge sheet. R.R.O. 1970, Reg. 680, s. 41.

42. Where a person charged appears before a presiding officer, he shall first be asked whether he requires further time to consider his plea, and,

(a) where he indicates that he does not require further time to consider his plea, he shall then be asked whether he pleads guilty or not guilty to each offence contained in the charge sheet, or

(b) where he requests further time to consider his plea, a reasonable adjournment shall be granted and a new date set when he shall appear before the presiding officer, at which time he shall be asked whether he pleads guilty or not guilty to each offence contained in the charge sheet. R.R.O. 1970, Reg. 680, s. 42.

43.—(1) Where the person charged pleads guilty to an offence contained in the charge sheet, the presiding officer, after hearing sufficient evidence to inform himself as to the circumstances surrounding the commission of the offence and upon being satisfied as to the guilt of the person charged, may find him guilty and impose a punishment authorized by this Part.

(2) Where the presiding officer is not satisfied as to the guilt of the person charged, he shall direct that a plea of not guilty be entered.

(3) The person charged may, at any time before final adjudication, change his plea to that of guilty or not guilty, as the case may be.

(4) The presiding officer may postpone the imposition of punishment for a period of time not longer than eight days. R.R.O. 1970, Reg. 680, s. 43.

44. Where a person charged pleads not guilty to an offence contained in the charge sheet, the presiding officer shall fix the time and place for the hearing of the charge and in fixing the time for the hearing, he shall allow the person charged a reasonable

opportunity to prepare his defence. R.R.O. 1970, Reg. 680, s. 44.

45. The person charged may inform the presiding officer in writing of the names of the members of the Force whom he desires to give evidence at the hearing and the Commissioner shall order those members to be present at the hearing. R.R.O. 1970, Reg. 680, s. 45.

46. The hearing and final disposition of a charge by way of review, confirmation or appeal shall be proceeded with as expeditiously as possible and, where undue delay occurs, the person charged may make application to the Commission to have the charge quashed and the Commission may order that the charge be quashed and thereupon the person charged shall be deemed to have been acquitted of the charge. R.R.O. 1970, Reg. 680, s. 46.

47. The presiding officer may, in his discretion before or during a hearing, on notice to the person charged, adjourn the hearing to a time and place to be appointed, but no such adjournment shall unduly delay the hearing. R.R.O. 1970, Reg. 680, s. 47.

48.—(1) The Commissioner may designate a counsel, constable or other police officer who shall have conduct of the hearing against the person charged, and in the conduct of the hearing, the person so designated may,

- (a) examine and cross-examine witnesses;
- (b) sum up the evidence in support of the charge; and
- (c) before the final verdict is rendered, at the direction of or with the consent of the Commissioner, withdraw the charge.

(2) The constable or other police officer designated under subsection (1) shall be of equal rank to or higher rank than the person charged.

(3) The person charged is entitled to make his full answer and defence to the charge and, for such purpose, may examine and cross-examine witnesses and make representations on his behalf, either personally or by his counsel or agent. R.R.O. 1970, Reg. 680, s. 48.

49. The person charged may admit any fact alleged against him for the purpose of dispensing with proof thereof. R.R.O. 1970, Reg. 680, s. 49.

50. Where a person charged is acquitted, no reference to that charge or acquittal shall be entered on his personal record. R.R.O. 1970, Reg. 680, s. 50.

TRIAL OF MINOR OFFENCES

51.—(1) Where the offence charged is a minor offence,

- (a) the evidence shall be given under oath but need not be taken down in writing; and
- (b) the person charged shall have an opportunity of,
 - (i) hearing the evidence against him,
 - (ii) calling witnesses, whether members of a police force or any other persons, in his defence, and
 - (iii) giving evidence as a witness on his own behalf.

(2) Where the person charged absconds or refuses or neglects without good and sufficient cause to attend the hearing at the time and place fixed, the case may be decided in his absence.

(3) Where the presiding officer has heard the person charged, the witnesses and any representations made, he shall, after considering the matter, convict the person charged, or dismiss the charge, as the case may be.

(4) A person found guilty of a minor offence is liable to,

- (a) an admonition; or
- (b) forfeiture of leave or days off not exceeding five days; or
- (c) forfeiture of pay not exceeding three days pay.

(5) The decision of the presiding officer, including the punishment imposed, if any, shall be in writing and a copy shall forthwith be served upon the person charged.

(6) Where the presiding officer is not the Commissioner, he may refer, and on the request of the Commissioner, shall refer the charge for hearing to the Commissioner or another presiding officer designated by him, and the person charged shall be notified of the time and place fixed for the hearing.

(7) Where the presiding officer designated by the Commissioner hears and decides a charge and imposes a punishment, the Commissioner shall, within seven days, review the decision and punishment, and either confirm or quash the conviction and may confirm, mitigate, commute or remit any or all punishments imposed.

(8) Where the Commissioner fails to review the decision and punishment within seven days, he shall be deemed to have confirmed both the decision and punishment.

(9) A person convicted of a minor offence may appeal his conviction or the punishment imposed, or both, as confirmed or altered by the Commissioner, to the Commission. R.R.O. 1970, Reg. 680, s. 51.

TRIAL OF MAJOR OFFENCES

52.—(1) Where the offence charged is a major offence,

- (a) the witness shall be sworn;
- (b) the evidence shall be recorded verbatim by some reliable means; and
- (c) the person shall have an opportunity of,
 - (i) hearing the evidence against him,
 - (ii) calling witnesses, whether members of a police force or any other persons, in his defence, and
 - (iii) giving evidence as a witness on his own behalf.

(2) Where the person charged absconds or refuses or neglects without good and sufficient cause to attend the hearing at the time and place fixed, the case may be decided in his absence.

(3) When the presiding officer has heard the person charged, the witnesses and any representations made, he shall, after considering the matter, convict the person charged or dismiss the charge, as the case may be.

(4) The decision of the presiding officer, including the punishment imposed, if any, shall be in writing and a copy shall forthwith be served upon the person charged.

(5) Where the presiding officer is not the Commissioner, he may refer, and on request of the Commissioner, shall refer the charge for hearing to the Commissioner or another presiding officer designated by him, and the person charged shall be notified of the time and place fixed for the hearing.

(6) Where the presiding officer designated by the Commissioner hears and decides a charge and imposes a punishment, the Commissioner shall within seven days review the decision and punishment, and either confirm or quash the conviction and he may confirm, mitigate, commute or remit any or all punishments imposed and shall forthwith notify the convicted person in writing of his decision.

(7) Where the Commissioner fails to review the decision and punishment within seven days, he shall be deemed to have confirmed both the decision and punishment.

(8) A person found guilty of a major offence is liable to,

- (a) dismissal; or
- (b) be required to resign, and in default of resigning within seven days, to be summarily dismissed from the Force; or
- (c) reduction in rank or gradation of rank; or
- (d) forfeiture of pay not exceeding five days pay; or
- (e) forfeiture of leave or days off not exceeding twenty days; or
- (f) a reprimand, which may be imposed in lieu of or in addition to any other punishment imposed.

(9) A person convicted of a major offence may appeal his conviction or the punishment imposed, or both, as confirmed or altered by the Commissioner, to the Commission. R.R.O. 1970, Reg. 680, s. 52.

WHEN PENALTY TO TAKE EFFECT

53. No member of the Force is subject to any penalty under this Part except after a hearing and final disposition of a charge on appeal as provided by this Part, or after the time for appeal has expired. R.R.O. 1970, Reg. 680, s. 53.

FORFEITURE OF PAY

54. Where a penalty of more than one day's forfeiture of pay is imposed it shall be deemed to mean the forfeiture of not more than one day's pay in each pay period until the full penalty has been paid, but where the person convicted leaves the Force, the whole amount of the forfeiture of pay then remaining may be deducted from any pay then due. R.R.O. 1970, Reg. 680, s. 54.

SUBMISSION OF DECISION TO SOLICITOR GENERAL

55. Where a decision imposing punishment under this Part becomes final and action by the Lieutenant Governor in Council is required to implement the punishment, the Commissioner or Commission, as the case may be, imposing the punishment shall submit the decision to the Solicitor General for his recommendation to the Lieutenant Governor in Council. R.R.O. 1970, Reg. 680, s. 55.

SUSPENSION FROM DUTY

56.—(1) Where a constable or other police officer is suspected of or charged with a contravention of an Act of the Parliament of Canada or of the Legislative Assembly of the Province of Ontario, or is suspected of or charged with an offence against the code, the Commissioner or a Deputy Commissioner or Assistant Commissioner may suspend him from duty until the charge has been disposed of, but where the constable or other police officer is not charged within seventy-two hours after being suspended, he shall be returned to duty.

(2) During the period of suspension, no member shall,

- (a) exercise any power or authority vested in him as a member of the Force; or
- (b) wear or use any article of clothing or equipment issued to him as a member of the Force.

(3) A superintendent or inspector in charge of a district may exercise the powers of suspension mentioned in subsection (1), subject to such suspension being subsequently confirmed by the Commissioner, a Deputy Commissioner or an Assistant Commissioner within seventy-two hours.

(4) The Commissioner may, at any time, revoke a suspension and order that the suspended constable or other police officer be returned to duty.

(5) Where a constable or other police officer is convicted of an offence for which a term of imprisonment is imposed, the Commissioner may, notwithstanding any appeal, suspend the constable or other police officer without pay. R.R.O. 1970, Reg. 680, s. 56.

ACTING COMMISSIONER

57.—(1) Where there is a vacancy in the office of Commissioner or if, for any reason, the Commissioner is unable to carry on his duties, the Solicitor General may designate a Deputy Commissioner or an Assistant Commissioner to exercise the disciplinary powers and perform the duties of the Commissioner in suspending any constable or other police officer or in hearing or reviewing any charge of an offence against the code.

(2) Subject to subsection (1), where the Commissioner is temporarily absent or incapable of acting due to illness, a Deputy Commissioner or an Assistant Commissioner, designated by the Commissioner, may exercise the disciplinary powers and perform the duties of the Commissioner in suspending any constable or other police officer or in hearing or reviewing any charge of an offence against the code. R.R.O. 1970, Reg. 680, s. 57.

APPEALS TO THE COMMISSION

58.—(1) In the case of a conviction of an offence, a notice of appeal shall be directed to the chairman of the Commission, setting forth the conviction, the punishment imposed and the grounds on which the appeal is based.

(2) The notice of appeal shall be served on the Commissioner and the Commission not later than fifteen days after the time the appellant received notice of his conviction and the punishment imposed, as confirmed or altered by the Commissioner.

(3) The Commission may, before or after the expiration of the time for service of a notice of appeal, extend the time for service for a further period not exceeding thirty days within which service may be effected.

(4) Where a notice of appeal is served on the Commissioner, he shall forward to the Commission the original charge sheet with particulars of the conviction and the punishment imposed, and the record of the hearing, including all documents, evidence and exhibits.

(5) The Commission shall notify all parties of the time and place for the hearing of the appeal.

(6) The Commission shall decide an appeal of a conviction of, or the punishment imposed for, a minor offence by holding a hearing *de novo*, and for such purpose the provisions of this Part that apply to the initial hearing of a charge apply with necessary modifications to a hearing *de novo*.

(7) The Commission shall decide an appeal of a conviction of, or the punishment imposed for, a major offence from the record but the Commission may, in special circumstances, hear such evidence as it considers advisable.

(8) The decision of the Commission is final.

(9) At the hearing of the appeal, the appellant and the Commissioner are entitled to appear and to be represented by counsel or agent and to present their argument.

(10) On the hearing of an appeal against a conviction or the punishment imposed, or both, the Commission may,

- (a) dismiss the appeal;
- (b) allow the appeal and quash the conviction and punishment imposed;
- (c) vary the punishment imposed as it considers just;
- (d) affirm the punishment imposed;

(e) substitute a decision that in its opinion should have been reached; or

(f) order a new hearing of the charge. R.R.O. 1970, Reg. 680, s. 58.

WITNESS FEES

59. Witnesses at a hearing under this Part, other than members of a police force, shall be paid by the Force fees and expenses as follows:

1. Attending the hearing each day\$6
2. Where a witness travels by private automobile, 10 cents a mile each way for each mile necessarily travelled between his place of residence and the place where the hearing is held but where the hearing is held in the municipality where the witness resides, 75 cents.
3. Where a witness travels by means other than private automobile, a sum equal to the amount of the fare actually paid for the transportation from his place of residence to the place where the hearing is held, and return.
4. Where a witness is required to attend the hearing on more than one day and returns to his place of residence at night, the travelling allowance mentioned in paragraph 2 or 3, as the case may be, is payable in respect of each day's attendance.
5. Where a witness resides elsewhere and in the opinion of the person conducting the hearing it is desirable that the witness remain overnight at the place where the hearing is held, a sum actually and reasonably paid by him for living expenses. R.R.O. 1970, Reg. 680, s. 59.

GENERAL

60. Where the Ontario Police Commission has held an inquiry into the conduct or capabilities of any member of the Force under subsection 43 (3) of the Act and reports that the member does not perform or is incapable of performing his duties in a manner fitted to, or his conduct is such as not to, satisfy the requirements of his position, the Commission may recommend to the Solicitor General that the member be dismissed, placed on retirement if he is entitled thereto, or reduced in rank and pay, but a recommendation for dismissal shall not be made unless it is concurred in by all members of the Commission. R.R.O. 1970, Reg. 680, s. 60.

61. Except with the consent of the Commissioner, no member of the Force shall engage directly or indirectly in any other occupation or calling, and he shall devote his whole time and attention to the service of the Force. R.R.O. 1970, Reg. 680, s. 61.

62. No member of the Force shall,

- (a) join or associate himself with any union connected with any labour organization or any body not belonging to or affiliated with the Force or the civil service except where a membership in the organization or body is authorized by the Solicitor General;
- (b) take any part in politics or occupy an official position in a party organization, but this does not affect the right of the member to private political views or to vote;
- (c) sign any petition on any subject to the government;
- (d) cause or permit any person not a member of the Force to make requests in his behalf that relate to the Force, but shall make his own applications through the proper channels to the Commissioner; or
- (e) contract debts that he is unwilling or unable to discharge and that may interfere with the performance of his duties as a member of the Force. R.R.O. 1970, Reg. 680, s. 62.

SERVICE BADGES

63.—(1) A service badge shall be granted to a member of the Force for each five-year period of continuous service.

(2) The member shall be paid an allowance of \$5 a month for each service badge to which he is entitled. R.R.O. 1970, Reg. 680, s. 63.

RESIGNATION OR RETIREMENT FROM THE FORCE

64.—(1) Without the consent of the Commissioner, no member of the Force shall resign unless he has given two weeks' notice in writing to the Commissioner.

(2) Upon the resignation or retirement of any member of the Force, he shall return to the Force in good order all of the last issue of uniform and equipment with which he has been provided.

(3) No allowance shall be made for transportation from the point at which any member leaves the Force. R.R.O. 1970, Reg. 680, s. 64.

65. A certificate of service and character may be issued by the Commissioner to any member who has left the Force after he has served at least two years

with the Force and has not been dismissed or required to resign by reason of disciplinary action, and no duplicate of the certificate shall be issued. R.R.O. 1970, Reg. 680, s. 65.

APPOINTMENT TO THE FORCE

66. Applications for appointment to the Force shall be made in writing to the Commissioner. R.R.O. 1970, Reg. 680, s. 66.

67. No person shall be appointed to the Force unless he,

- (a) is a Canadian citizen or a British subject;
- (b) is eighteen years of age or over;
- (c) is certified by a legally qualified medical practitioner in the public service of Ontario to be in good health, mentally and physically, and fit for duty as a member of the Force;
- (d) produces satisfactory proof of having successfully completed at least two years secondary school education or its equivalent and passes the test required by the Commissioner; and
- (e) is of good moral character and habits and submits at least three satisfactory references as to his character and previous employment. O. Reg. 970/74, s. 2.

68.—(1) The Commissioner may require the applicant to appear personally before him in order to determine his suitability for appointment.

(2) The Commissioner is not obliged to give any reason for the rejection of an applicant. R.R.O. 1970, Reg. 680, s. 68.

UNIFORM AND EQUIPMENT

69. All articles of uniform and equipment necessary for the performance of duty shall be provided at the public expense, but, where damage or loss is occasioned by the fault of a member of the Force, the cost of replacement shall be borne by him. R.R.O. 1970, Reg. 680, s. 69.

OATH OF AUXILIARY MEMBER

70. The oath to be taken and subscribed to by an auxiliary member of the Force shall be in Form 3. R.R.O. 1970, Reg. 680, s. 70.

Schedule

CODE OF OFFENCES

1. Any chief of police, other police officer or constable commits an offence against discipline if he is guilty of,

(a) DISCREDITABLE CONDUCT, that is to say, if he,

- (i) acts in a disorderly manner, or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force,
- (ii) is guilty of oppressive or tyrannical conduct towards an inferior in rank,
- (iii) uses profane, abusive or insulting language to any other member of a police force,
- (iv) wilfully or negligently makes any false complaint or statement against any member of a police force,
- (v) assaults any other member of a police force,
- (vi) withholds or suppresses a complaint or report against a member of a police force,
- (vii) is guilty of an indictable offence or an offence punishable upon summary conviction under the *Criminal Code* (Canada), or
- (viii) contravenes any provision of the *Police Act* or the regulations;

(b) INSUBORDINATION, that is to say, if he,

- (i) is insubordinate by word, act or demeanour, or
- (ii) without lawful excuse, disobeys, omits or neglects to carry out any lawful order;

(c) NEGLIGENCE OF DUTY, that is to say, if he,

- (i) without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force,
- (ii) idles or gossips while on duty,
- (iii) fails to work in accordance with orders, or leaves an area, detachment, detail or other place of duty, without due permission or sufficient cause,
- (iv) by carelessness or neglect permits a prisoner to escape,
- (v) fails, when knowing where an offender is to be found, to report him or to make due exertions for bringing him to justice,

- (vi) fails to report a matter that it is his duty to report.
 - (vii) fails to report anything that he knows concerning a criminal or other charge, or fails to disclose any evidence that he, or any person within his knowledge, can give for or against any prisoner or defendant.
 - (viii) omits to make any necessary entry in any official document or book.
 - (ix) feigns or exaggerates sickness or injury to evade duty.
 - (x) is absent without leave from or late for parade, court or any other duty, without reasonable excuse, or
 - (xi) is improperly dressed, dirty or untidy in person, clothing or equipment while on duty;
- (d) DECEIT, that is to say, if he,
- (i) knowingly makes or signs a false statement in an official document or book,
 - (ii) wilfully or negligently makes a false, misleading or inaccurate statement pertaining to official duties, or
 - (iii) without lawful excuse destroys or mutilates an official document or record or alters or erases an entry therein;
- (e) BREACH OF CONFIDENCE, that is to say, if he,
- (i) divulges any matter which it is his duty to keep secret,
 - (ii) gives notice, directly or indirectly, to any person against whom any warrant or summons has been or is about to be issued, except in the lawful execution of such warrant or service of such summons,
 - (iii) without proper authority communicates to the public press or to any unauthorized person any matter connected with the police force,
 - (iv) without proper authority shows to any person not a member of the police force or any unauthorized member of the force any book, or written or printed paper, document or report that is the property of the police force.
- (v) makes any anonymous communication to the chief of police or superior officer or authority,
 - (vi) canvasses, except as authorized by the Act or the regulations, any person in respect of a matter concerning the police force,
 - (vii) signs or circulates a petition or statement in respect to a matter concerning the police force, except through the proper official channel or correspondence or established grievance procedure, or
 - (viii) calls or attends any unauthorized meeting to discuss any matter concerning the police force;
- (f) CORRUPT PRACTICE, that is to say, if he,
- (i) takes a bribe,
 - (ii) fails to account for or to make a prompt, true return of money or property received in an official capacity,
 - (iii) directly or indirectly solicits or receives a gratuity, present, pass, subscription or testimonial without the consent of the chief of police,
 - (iv) places himself under a pecuniary or other obligation to a licensee concerning the granting or refusing of whose licence a member of the police force may have to report or give evidence,
 - (v) improperly use his character and position as a member of the police force for private advantage,
 - (vi) in his capacity as a member of the police force writes, signs or gives, without the consent of the Chief of Police, a reference or recommendation to a member or former member of the police force, or any other police force, or
 - (vii) without the consent of the chief of police, supports in any way an application for a licence of any kind;
- (g) UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY, that is to say, if he,
- (i) without good and sufficient cause makes an unlawful or unnecessary arrest.

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POLICE

Reg. 791

(ii) uses any unnecessary violence to a prisoner or other person contacted in the execution of duty, or

(iii) is uncivil to a member of the public;

(h) DAMAGE TO CLOTHING OR EQUIPMENT, that is to say, if he,

(i) wilfully or carelessly causes waste, loss or damage to any article of clothing or equipment, or to any book, document or other property of the police force, or

(ii) fails to report waste, loss or damage however caused;

(i) CONSUMING INTOXICATING LIQUOR IN A MANNER PREJUDICIAL TO DUTY, that is to say, if he,

(i) while on duty is unfit for duty through drinking intoxicating liquor, or

(ii) reports for duty and is unfit for duty through drinking intoxicating liquor, or

(iii) except with the consent of a superior officer or in the discharge of duty, drinks or receives from any other person intoxicating liquor on duty, or

(iv) demands, persuades or attempts to persuade another person to give or purchase or obtain for a member of the police force any intoxicating liquor, while on duty;

(j) LENDING MONEY TO A SUPERIOR; OR

(k) BORROWING MONEY FROM OR ACCEPTING A PRESENT FROM ANY INFERIOR IN RANK.

2. Any chief of police, other police officer or constable also commits an offence against discipline and shall be liable to punishment as provided in the regulations, if he connives at, abets or is knowingly an accessory to any offence against discipline under this code. R.R.O. 1970, Reg. 680, Sched.

Form 1

Police Act

CHARGE SHEET

..... POLICE FORCE
(name of municipality)

To
(name of person charged)

YOU STAND CHARGED

That you did

and did thereby commit a offence(s)
(minor) (major)

This is therefore to command you to appear before

..... on the day of

19.... at o'clock in the noon

at to answer the said charge(s).

Dated this day of, 19....

.....
(authorized signing officer)

Copy served on person charged the day of

..... 19....

.....
(person effecting service)

(NOTE: THE FOLLOWING MAY FORM PART OF OR BE ATTACHED TO CHARGE SHEET.)

RECORD HEARING PROCEEDINGS

Referred to on
(date)

for hearing

..... Presiding Officer
(signature)

Referred to on
(date)

for hearing

..... Chief of Police
(signature)

Referred to on
(date)

for hearing

..... for Board or Committee
(signature)

of Council.

ADJOURNMENTS

Hearing adjourned to
(date)

Figure 1

A GENERAL FRAMEWORK OF COLLECTIVE BARGAINING LEGISLATION

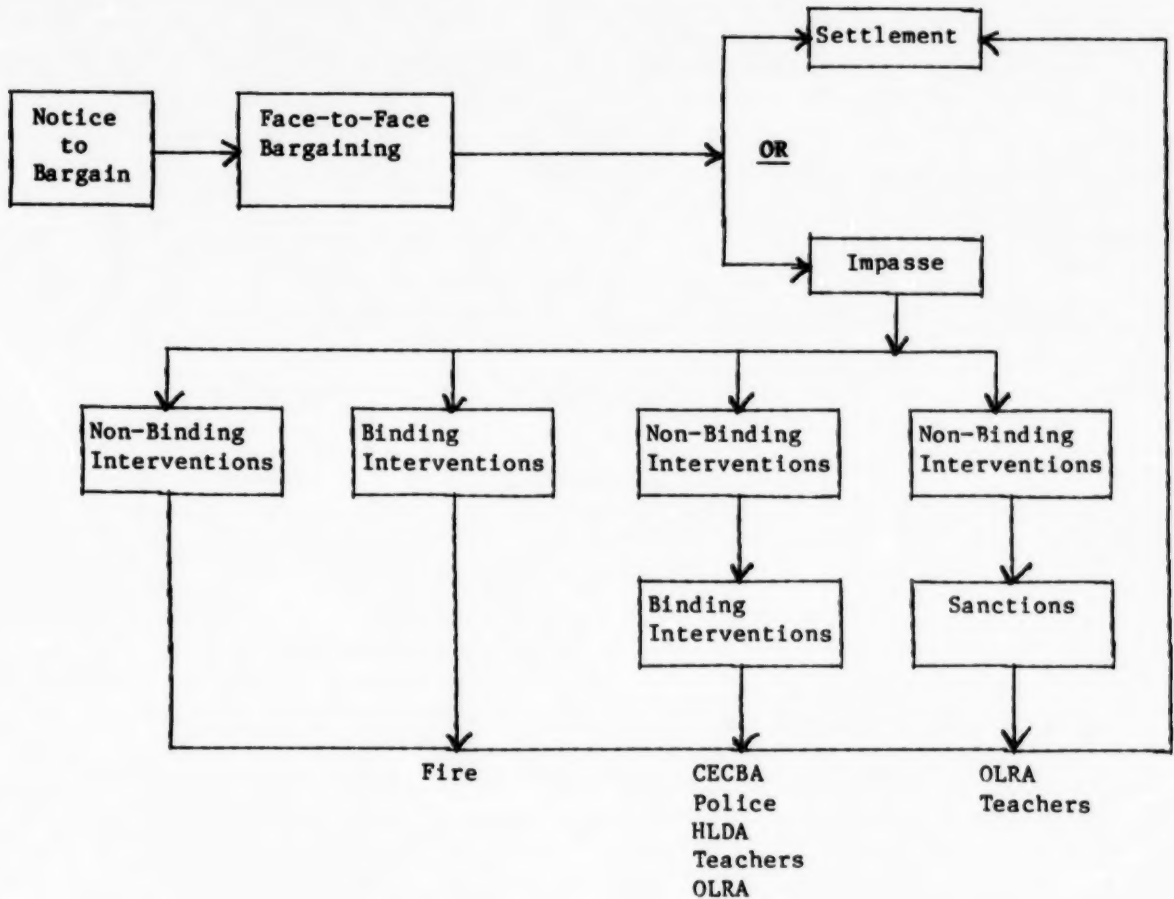


Figure 2

THE ONTARIO LABOUR RELATIONS ACT (OLRA)

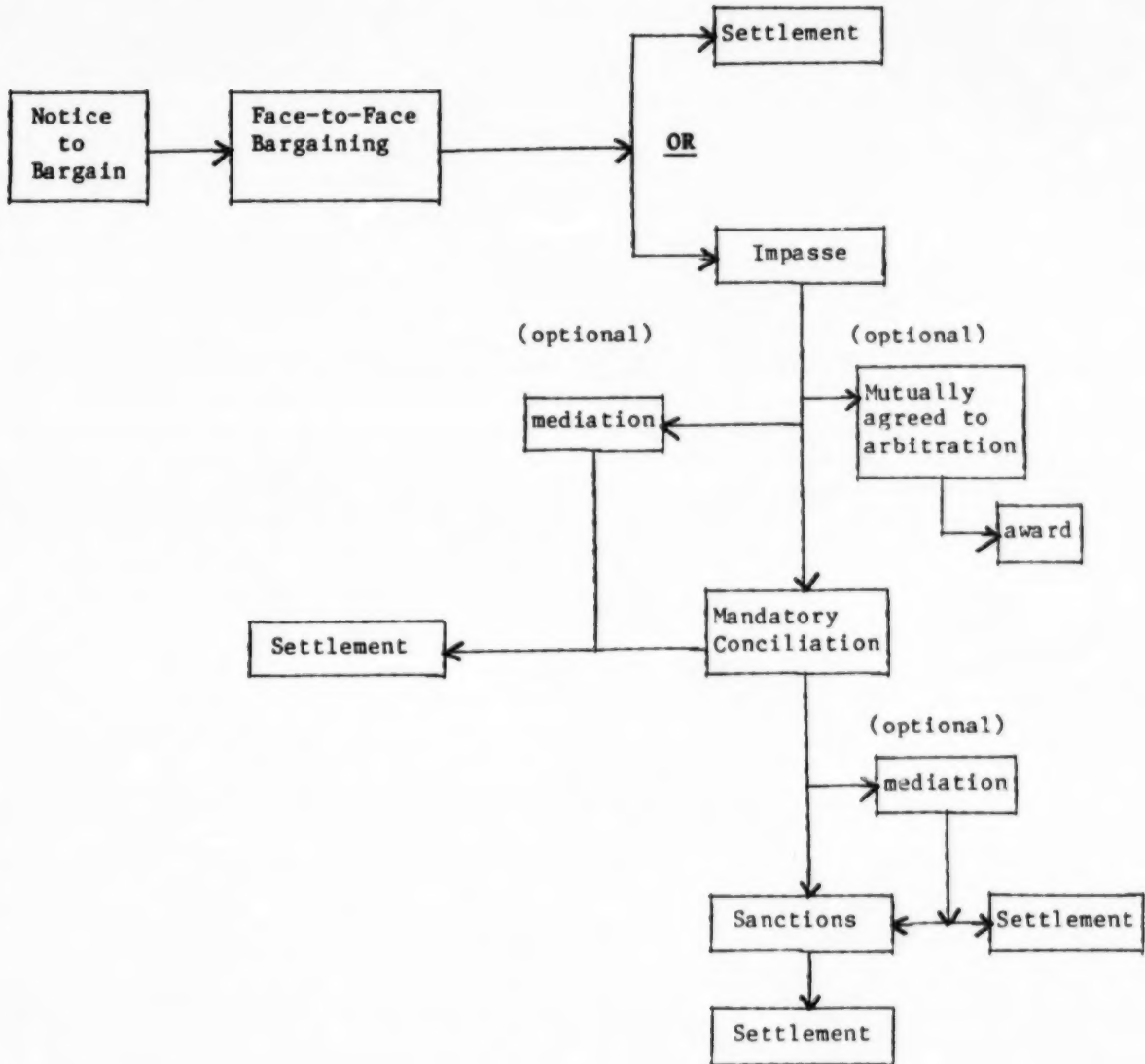


Figure 3

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT (CECBA)

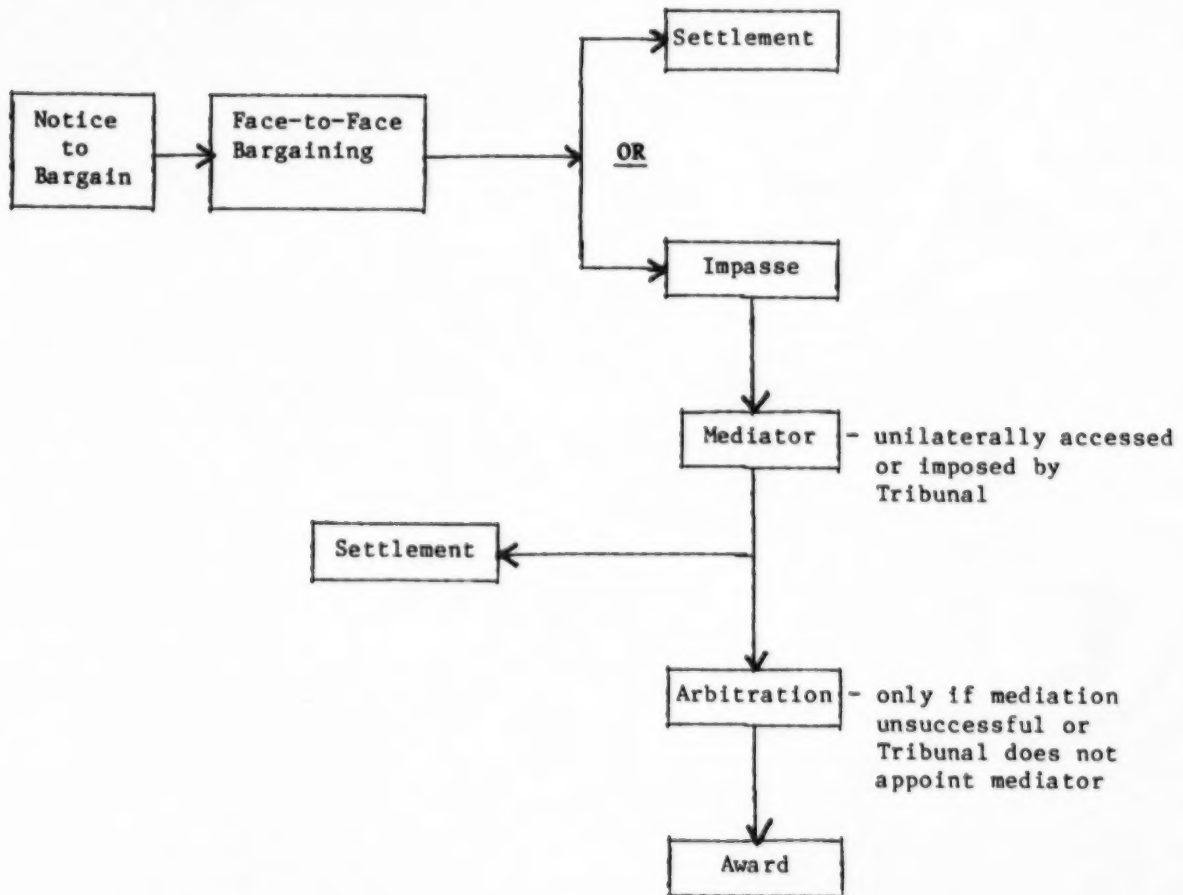


Figure 4

*** HOSPITAL LABOUR DISPUTES ARBITRATION ACT (HLDA)**

*linked to OLRA

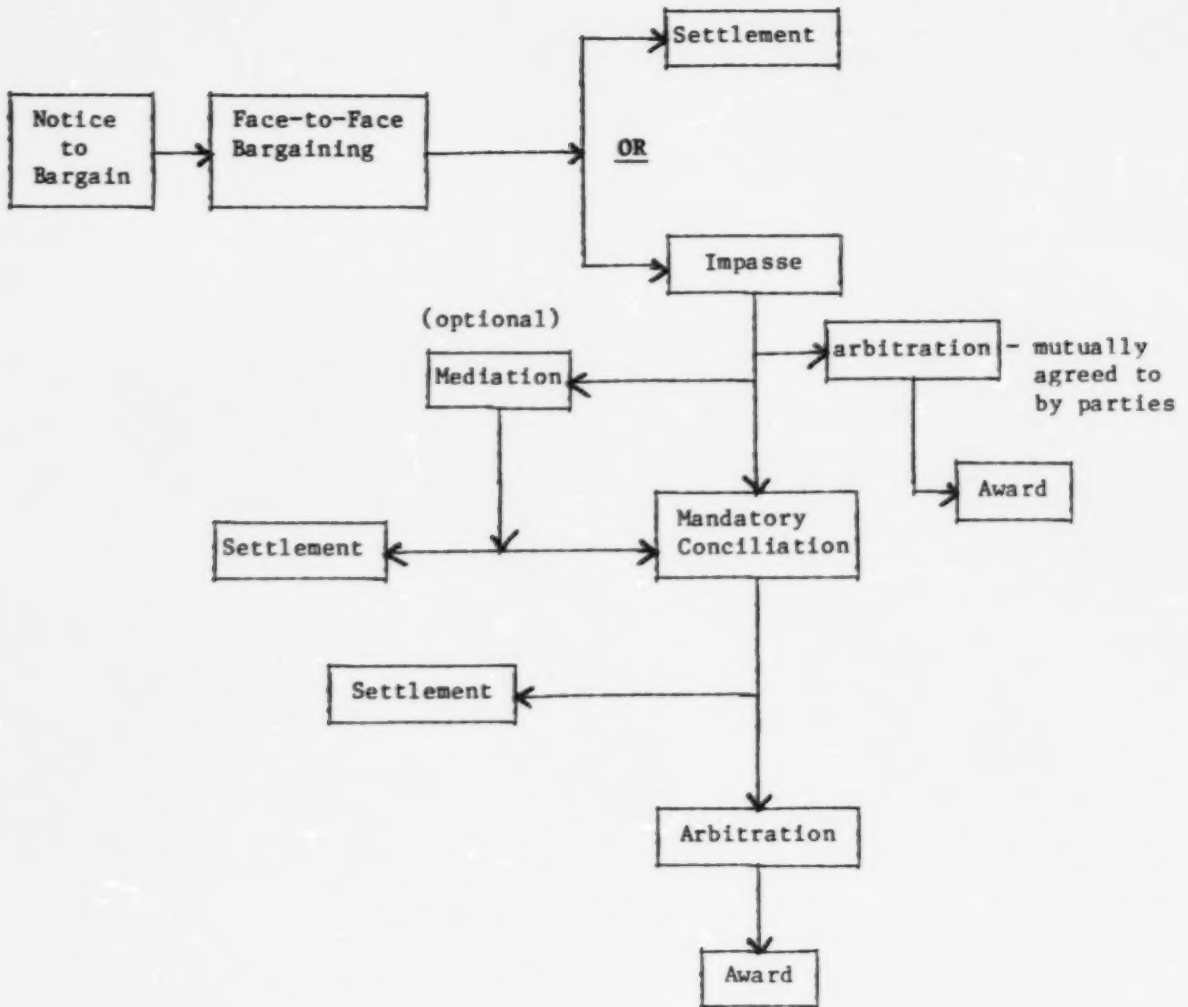


Figure 5

SCHOOL BOARDS AND TEACHERS COLLECTIVE NEGOTIATIONS ACT

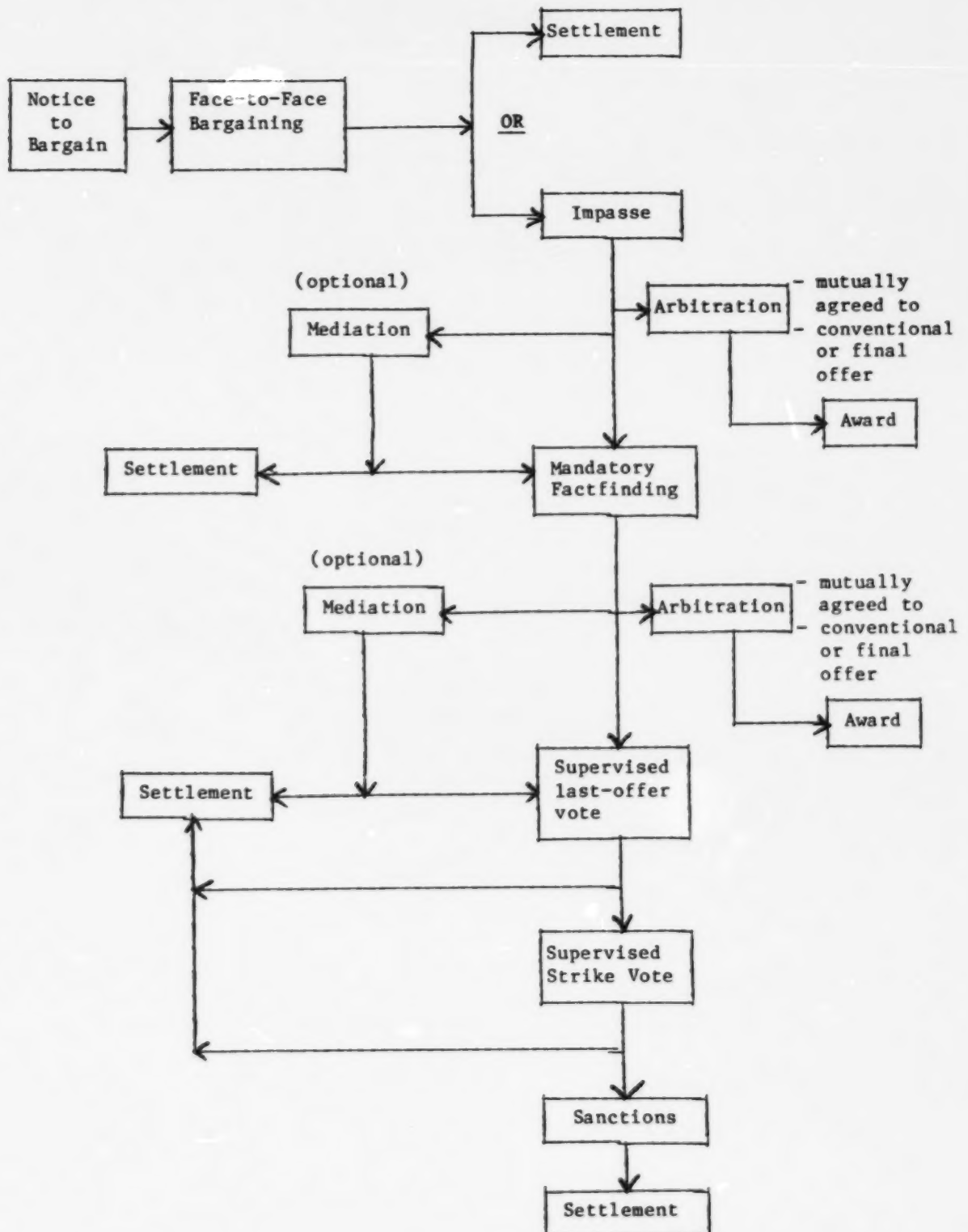


Figure 6

THE POLICE ACT

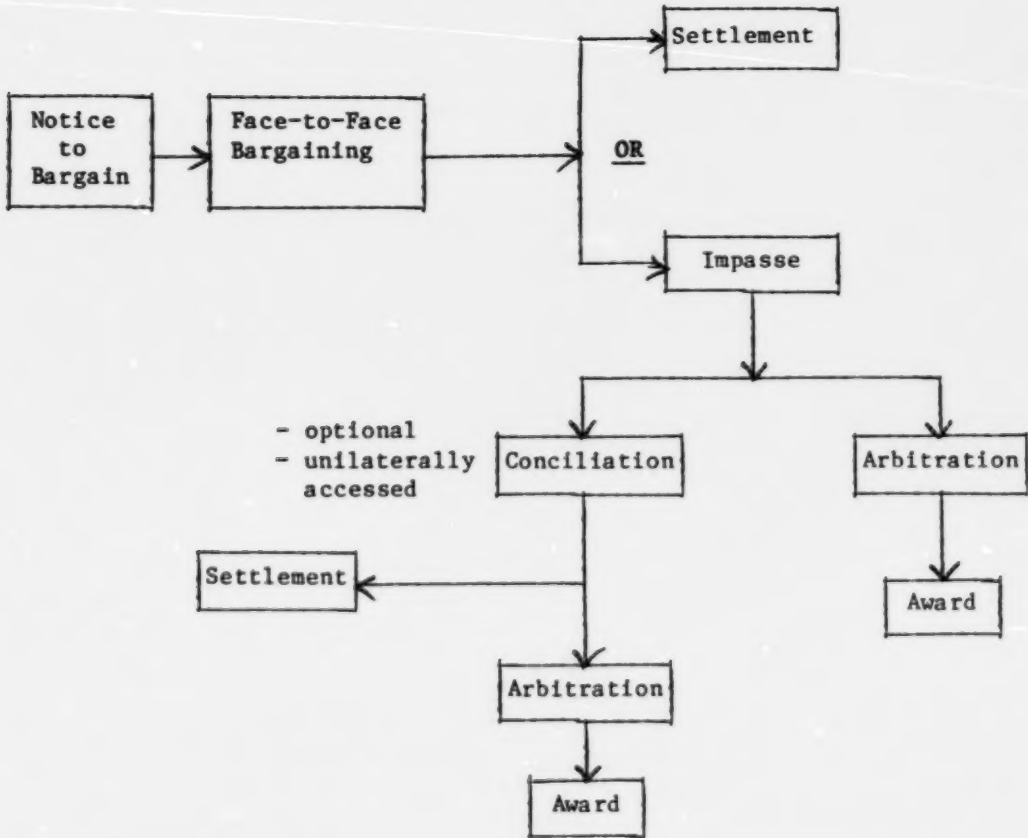
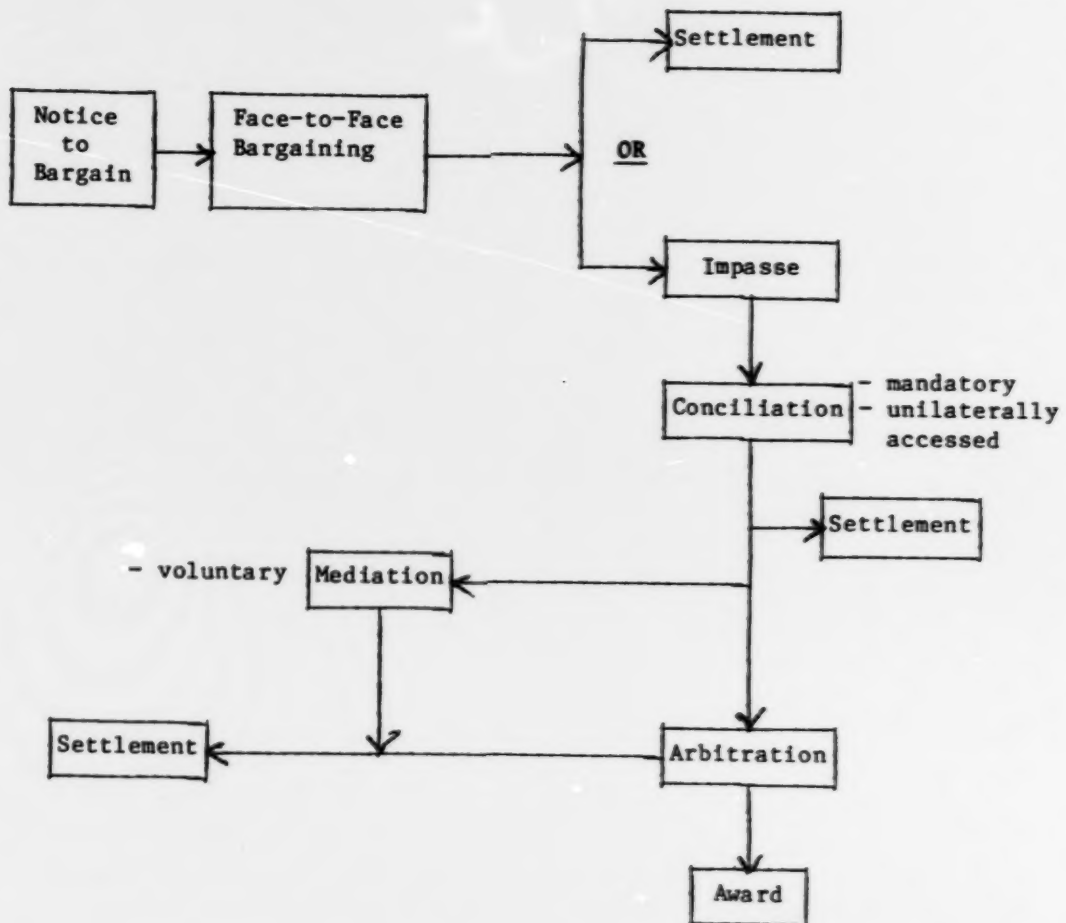


Figure 7

**AND PROPOSED MODEL OF COLLECTIVE BARGAINING
UNDER THE POLICE ACT**



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- 85-1 Response to Draft Regulation 309: Standards for Municipal Landfill Sites
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